

RESOLUTION NO. R-16-04

A RESOLUTION EXTENDING THE TERM OF A CABLE TELEVISION
FRANCHISE

WHEREAS, a cable television franchise was granted to Centel Cable Television Company of Illinois by the City pursuant to a Cable Television Franchise Agreement dated July 2, 1984, which together with all subsequent amendments and modifications are hereinafter collectively referred to as the "Franchise" or the "Franchise Documents"; and

WHEREAS, on September 5, 1989 (Resolution R-82-89), the City of Wheaton consented to the transfer of the Franchise from Centel Cable Television Company of Illinois to Jones Growth Partners, L.P., a Colorado Limited Partnership; and

WHEREAS, the Franchise was to expire on July 1, 1999; and

WHEREAS, on September 21, 1998 (Resolution R-67-98), the City of Wheaton extended the terms of the Franchise until August 15, 2001; and

WHEREAS, on February 16, 1999 (Resolution R-10-99), the City of Wheaton consented to the transfer of the Franchise from Jones Growth Partners, L.P. to TCI Cablevision of Maryland, Inc. ("Franchisee"); and

WHEREAS, on August 6, 2001 (Resolution R-74-01), the City of Wheaton extended the terms of the 1984 Franchise Agreement with the consent of TCI Cablevision of Maryland until February 15, 2002; and

WHEREAS, on February 4, 2002 (Resolution R-15-02), the City of Wheaton extended the terms of the 1984 Franchise Agreement with the consent of TCI Cablevision of Maryland until April 15, 2002; and

WHEREAS, on April 15, 2002 (Resolution R-32-02), the City of Wheaton extended the terms of the 1984 Franchise Agreement with the consent of TCI Cablevision of Maryland until June 15, 2002; and

WHEREAS, on June 3, 2002 (Resolution R-52-02), the City of Wheaton extended the terms of the 1984 Franchise Agreement with the consent of TCI Cablevision of Maryland until August 15, 2002; and

WHEREAS, on June 17, 2002 (Resolution R-59-02), the City of Wheaton consented to the transfer of control of the Wheaton Cable Television Franchise and Wheaton Cable System from AT&T Corporation to AT&T Comcast Corporation; and

WHEREAS, on August 15, 2002 (Resolution R-64-02), the City of Wheaton extended the terms of the 1984 Franchise Agreement with the consent of TCI Cablevision of Maryland until

February 15, 2003; and

WHEREAS, on February 15, 2003 (Resolution R-09-03), the City of Wheaton extended the terms of the 1984 Franchise Agreement with the consent of TCI Cablevision of Maryland until May 15, 2003; and

WHEREAS, on May 5, 2003 (Resolution R-27-03), the City of Wheaton extended the terms of the 1984 Franchise Agreement with the consent of TCI Cablevision of Maryland until September 30, 2003; and

WHEREAS, on September 30, 2003 (Resolution R-60-03), the City of Wheaton extended the terms of the 1984 Franchise Agreement with the consent of TCI Cablevision of Maryland until March 31, 2004; and

WHEREAS, the City of Wheaton seeks to further extend the term of the Franchise until September 30, 2004, or until a new Cable Franchise Agreement is finalized, whichever is earlier, in order to enable the City and Franchisee to continue the Franchise renewal process and negotiate a renewal of the Franchise.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the term of the Franchise hereby be extended until September 30, 2004, or until a new Cable Franchise Agreement is finalized, whichever is earlier, subject to the following terms and conditions:

1. During the extension of the Franchise term, the City and Franchisee shall be subject to the same terms and conditions as set forth in the Franchise Documents, provided that the City agrees that nothing herein shall be interpreted to prevent the Franchisee from: (a) seeking to pass through to basic cable service subscribers any increase in the cost of complying with the public, educational and governmental access support requirements in the Franchise Documents after March 31, 2003, to the extent permitted by, and in compliance with, federal rate regulation, and subject to the City's right to regulate rates pursuant to federal law and regulation; and (b) itemizing the increase in the cost of such access support on subscribers' bills as an access channel cost, subject to applicable law and the City's right to regulate the amount attributable to such costs pursuant to federal law and regulation.

2. During the extension period, the representatives of the City and of the Franchisee shall work together in good faith and diligently in order to consider a renewal of the Franchise pursuant to the procedures contained in Section 626 of the Cable Communications Policy Act of 1984, 47 U.S.C. §§ 546, as amended (the "1984 Cable Act").

3. Neither the City nor the Franchisee waive their rights to rely upon the rights, procedures, protections and recourse granted to them pursuant to applicable federal, state or local rule, regulation, law or precedent (specifically including, but not limited to, the 1984 Cable Act), provided that, notwithstanding the foregoing, the Franchisee:

(a) make, as voluntary contributions without offset against the Franchisee's franchise fee payment obligations, all payments in support of public, educational and government access which are currently required to be made under the Franchise Documents (the "Access Payments"), as such voluntary contributions were contemplated by the legislative history of the 1984 Cable Act (H.Rep. 98-934, 98th Cong., 2nd Sess. At 65);

(b) waive any right it may have under applicable federal, state or local rule, regulations, law or precedent (including, without limitation, Sections 611, 624(c), 625 and 637(a) of the 1984 Cable Act, 47 U.S.C. § § 531, 544(c), 545 and 557(a)) to claim either that: (i) its Access Payments are not voluntary contributions or (ii) it is entitled to offset all or any portion of such Access Payments against the amount to be paid to the City as franchise fees; and

(c) agrees that it shall not contest the validity of any aspect of this Extension Agreement, nor contest the City's authority to enter into this Extension Agreement or to enforce the terms of this Extension Agreement and the Franchise Documents through September 30, 2004, or until a new Cable Franchise Agreement is finalized, whichever is earlier.

4. This Resolution and the Franchise Documents shall remain binding on the Franchisee and all permitted assignees, transferees, or other successors in the interest to Franchisee, and no such assignment, transfer, or any other change in control shall be permitted from and after the date of this Resolution unless, among other things, the assignee, transferee or successor specifically agrees to be bound by the terms of this Resolution and the Franchise Documents.

ADOPTED this 15th day of March, 2004.


Mayor

ATTEST:


City Clerk

Ayes:

Roll Call Vote

Councilman Bolds
Councilwoman Corry
Councilman Johnson
Mayor Carr
Councilwoman Johnson
Councilman Mork
Councilman Mouhelis

Nays:

None

Absent:

None

Motion Carried Unanimously