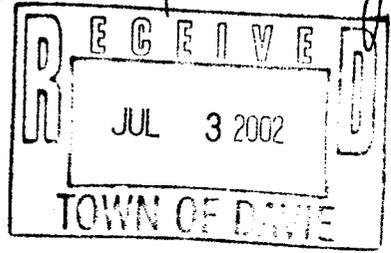


✓ C: Town clerk -
old business 6/21/02
please notify Monroe.



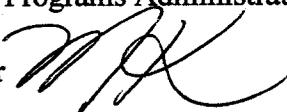
MONROE D. KIAR
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TOWN OF DAVIE
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(954) 584-9770

MEMORANDUM

DATE: July 2, 2002

TO: Thomas Willi, Town Administrator

CC: Mayor, and Councilmembers
Chris Kovanes, Programs Administrator

FROM: Monroe D. Kiar 

RE: Control Number 020612
Franchise Agreement Dated March 16, 1999 between Town of Davie and Comcast
Cablevision of Broward County, Inc. (now AT&T)

TOWN OF DAVIE
2002 JUL -2 P 3:35
ADM. SVC. DEPT.

Pursuant to the direction of the Town Council at its second meeting in June, the Town Attorney met with Mr. Chris Kovanes, Programs Administrator. The Town Council had indicated that it had received a number of complaints related to customer services that are to be provided by AT&T Broadband, the successor in interest of Comcast Cablevision of Broward County, Inc., pursuant to the agreement between Comcast Cablevision of Broward County, Inc. and the Town of Davie dated March 16, 1999. Mr. Kovanes and the Town Attorney's Office were asked to explore what avenues are available to the Town to address the concerns of the citizens. Accordingly, the Agreement was reviewed in detail by the Town Attorney's Office together with Mr. Kovanes.

The following are some possible options available to the Town in its endeavor to meet the needs of the citizens and address their concerns:

1. Section 1.1 of the Agreement of March 16, 1999, provides that the Town is granting to the Franchisee a non-exclusive franchise for cable television services within the Franchise Area consisting of the entire geographic area within the cable franchise jurisdiction of the Town of Davie. Since the Franchise granted to Comcast Cablevision of Broward County, Inc., the Assignor of AT&T Broadband is a non-

exclusive one, it is within the Town's right as indicated in Section 1.1, to grant a similar or other franchise to any other person or entity seeking to provide cable television services within the Franchise Area. Accordingly, one option available to the Town is to solicit other providers of cable television pursuant to a request for proposal.

2. The Agreement sets forth certain obligations to be adhered to by the Franchisee. They are to maintain a local office and a toll free telephone line 24 hours a day for the purpose of customer inquiries and complaints. The Franchisee is prohibited from denying service to any group of residents solely due to the income of those residents. Mr. Kovanes has indicated that it is his understanding that the Franchisee requires a greater deposit from lower income persons than those individuals in the Town with greater financial ability and resources. 3.4 of the Agreement requires the company to provide one free basic and expanded basic cable service hookup, including associated drop wiring to any governmental and institutional facilities, including, but not limited to, primary and secondary public schools, town office buildings, police, fire and EMS stations located in the Franchise Area within 150 feet of the company's energized feeder cable upon request by the Town. At a minimum, the company is to provide a free unlimited cable Internet service to all the governmental and institutional facilities referred to above within a year after the company makes personal computer based Internet access service via cable commercially available to any residential customers within the Town of Davie. According to Mr. Kovanes, this service has yet to be provided. The Agreement also requires the company to provide within 3 years of the date of the Agreement, one dedicated channel, facilities and other support for the Town's governmental use. The date of the contract is March 16, 1999, more than 3 years, and according to Mr. Kovanes, this requirement has not been fulfilled by the company. The Agreement also requires that the company shall be responsible for providing all onsite facilities, equipment, cabling and trained personnel necessary to permit both live and delayed cable cast of the Town Council Meetings. According to Mr. Kovanes, the Town incurred considerable expense when the new sound equipment and video equipment were installed, but to date, the Town has received only approximately \$12,500.00 from the Franchisee since the inception of the Agreement. Section 4.1 entitled "Rates, Fees and Charges to be Set Forth in Appendix D" requires that within 30 days of any new or modified rate fee charge, deposit or associated term or condition, the company will submit to the franchising authority a revised Appendix D reflecting the modification. Mr. Kovanes believes that the Franchisee may have failed to give sufficient notice and that a rollback of the rates may be in order until it does so. 4.2 again, prohibits discrimination in fees and charges and states that the Franchisee "shall not discriminate or permit discrimination between or among any persons in the rates, terms and conditions for the same level of cable service." Nevertheless, as stated earlier, it is Mr. Kovanes' belief that some subscribers are being required to make larger deposits at the time their service is installed than as being required of other users in the Town. Section 5.2.1 sets forth

the format of the subscriber bill and according to Mr. Kovanes, it is his belief that the Town has received customer complaints about the format being used by AT&T Broadband lacks sufficient clarity to be fully comprehensible to the subscribers. In light of the several issues outlined above, as well as other possible complaints that may have been received by the Town regarding the performance of the Franchisee, the Town may wish to avail itself of the provisions of Section 7.3.3 entitled "Performance Evaluation". This section of the Agreement allows that upon the Franchising Authority's request (the Town of Davie), but not prior to 2 years after the Franchise origination date, and not more frequently than every 2 years, the company shall prepare a status presentation, to provide information to the Franchising Authority regarding system performance, customer service satisfaction, and future system and programming planning. If on evaluating of status presentation contents, the Franchising Authority determines that additional information is needed to complete the evaluation, the company shall provide additional relevant data." Section 7.3.3 also provides that should the Franchise Authority determine that based on the presentation and expressed community concerns, unsatisfactory or deficient quality of cable service or customer service is being provided, then the company and the Franchising Authority shall enter into good faith negotiations to consider and determine a course of action to correct and improve service." Accordingly, another option available to the Town is its right to request a performance evaluation as outlined above, and should the Town and the Town Council feel that based upon the presentation and expressed community concerns, there is unsatisfactory or deficient quality of cable service being provided, then it can insist upon the company entering into good faith negotiations with the Town to consider and determine a course of action to correct and improve service.

3. Section 6 sets forth the compensation to be paid by the Franchisee to the Franchising Authority. The company is to submit a franchise fee report to the Franchising Authority not later than 30 days after the last day of each March, June, September and December throughout the term of the Agreement, setting forth the gross revenue for the quarter ending on said last day. Section 6.1.4 also provides that all amounts paid by the Franchisee to the Town shall be subject to audit and re-computation by the Franchising Authority for a period of 3 years after payment was made. If as a result of any such audit, the Franchising Authority determines that the company has underpaid its fees in any 12 month period by 10% or more, then, in addition to making full payment of the relevant obligation, the company shall reimburse the Franchising Authority for all of the reasonable costs associated with the audit or review, including all reasonable out-of-pocket costs for attorneys, accountants and other consultants. Thus, if the Town believes that any sums paid to it are inaccurate, it may insist upon an audit of the books and records to verify the accuracy of any amounts paid.
4. Section 7.43 also entitles the Franchising Authority to conduct a full compliance audit

and hold public hearings at any time during the term of the Franchise, provided it gives the company written notice twenty (20) days in advance of the commencement of such audits and associated hearings. Section 9 states that the company agrees that the Franchising Authority shall have the specific rights and remedies set forth in Section 9 and that these rights and remedies are in addition to any and all other rights or remedies now or hereafter available by law to the Franchising Authority to enforce the provisions of this Agreement and will not be deemed waived by the exercise of any other right or remedy. Section 9.2 lists a number of grounds for default. This includes any substantial failure to comply with any material provisions of the Agreement that is not cured within 30 days after notice from the Town. Where there is belief to be a breach, the responsible franchising official shall notify the company in writing of an alleged event of default which notice shall specify the alleged event of the default with reasonable particularity. The company shall, within 15 days after receipt of such notice, or such longer period of time as the franchising official may specify in such notice, either cure such alleged event of default or in a written response to the responsible franchising official, either presents facts and arguments in refutation or excuse of such alleged event of default, or state that such alleged event of default will be cured and set forth in a method and time scheduled for accomplishing such default. In the event the company requires more than 15 days to respond to the notice to the nature of the alleged default, it may request additional time to respond to the notice which request for an extension of time to respond shall not be unreasonably denied by the responsible franchising official.

5. Section 9.5 provides for the retainment of certain liquidated damages to the Town by the Franchisee should the Franchisee violate the terms of the Agreement. Section 9.5.5 provides however, that before assessing liquidated damages against the Franchisee, the Town shall give the Franchisee written notice of the violation and its intent to assess such damages, and following receipt of such notice, the Franchisee shall cure or commence to cure and the Franchisee and the Town shall make a good faith reasonable effort to resolve the dispute in question. If the dispute is not resolved in a 30 day period, the Town may collect liquidated damages owed either through a draw down of the security fund or through other means allowed by law. Section 10 provides for a performance bond of \$100,000.00 as security for the faithful performance for all provisions of the Franchise Agreement.

In short, a number of options are available to the Town. First, it can invite a responsible representative of AT&T Broadband for an evaluation performance presentation before the Town Council at an open public meeting. It can also send written demand requiring AT&T to comply with all provisions of the Agreement within 30 days and failure to do so, it can seek to recover against the \$100,000.00 security bond. The Town can also demand an audit of all funds due to the Town and an audit of all books and records, including an audit of all complaints that have been filed against AT&T as set forth in the Agreement. If all else fails, the Town can file suit for breach of contract. Further, if the Town finds there has been substantial material defaults, it can revoke the Agreement.

Also, as stated above, since this is a non-exclusive franchise, the Town can offer a request for proposal soliciting other cable television carriers to provide service to the Town of Davie. Also, Exhibit E to the Agreement at Section 4.3 requires that the Franchisee maintain all complaint records, including the date a complaint is received, the name and address of the effected subscriber, a description of the complaint, the date of the resolution, and a description of the resolution. As part of the review of the books and records of the Franchisee, the Town can insist upon reviewing the complaint records, which information can be utilized both during negotiations or in any possible litigation.

MDK/gmv