

## **SETTLEMENT AGREEMENT**

**THIS AGREEMENT** is made this 16th day of July, 2002, by, between and among: City of Oakland, California, a municipal corporation ("City"), and AT&T Broadband HC of Delaware, LLC ("Franchisee").

### **WITNESSETH:**

**WHEREAS**, the Franchisee operates the cable television system in the City under the terms and conditions of a nonexclusive cable franchise granted by the City in 1983 (Ordinance No. 10399 C.M.S , hereinafter referred to as the "Franchise"); and

**WHEREAS**, in 1999 the City approved a change of control of the Franchisee from Tele-Communications, Inc. ("TCI") to AT&T Corp.; and

**WHEREAS**, AT&T Corp. ("Transferor") currently indirectly owns and controls the Franchisee; and

**WHEREAS**, in February of 1999, the Franchisee entered into a Settlement Agreement ("1999 Settlement") with the City in connection with the City's consent to the transfer of control of the Franchise from TCI to AT&T Corp.; and

**WHEREAS**, AT&T Corp., the parent company of the Franchisee, and Comcast Corporation. have agreed to combine their respective cable operations and create a new public company called "AT&T Comcast Corporation" pursuant to an Agreement and Plan of Merger dated December 19, 2001 ("Proposed Transaction"); and

**WHEREAS**, completion of the Proposed Transaction will result in a change of control of the Franchisee ("Change of Control"); and

**WHEREAS**, the Franchise provides at section 8.006 that prior approval of the City is required for any transaction that will result in a change of control of the Franchisee; and

**WHEREAS**, on or about February 25, 2002, Franchisee and AT&T Corp. filed FCC Form 394 pursuant to the 1992 Cable Act and FCC regulations, requesting that the City approve the Change of Control of the Franchisee from AT&T Corp. to a new public entity to be known as AT&T Comcast Corporation; and

**WHEREAS**, a dispute exists between the City and the Franchisee regarding the Franchisee's compliance with the terms of the Franchise and 1999 Settlement, causing the City to seek liquidated damages from the Franchisee; and

**WHEREAS**, the Parties have reached agreement on a compromise of such dispute; and

**NOW, THEREFORE**, in consideration of the promises and undertakings herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, THE PARTIES DO HEREBY AGREE AS FOLLOWS:

## SECTION 1. SETTLEMENT OF CLAIMS

- 1.1 Save except as previously provided to the contrary in Section 1.10 hereof, City agrees to release any and all claims **known or which through reasonable diligence could have been discovered** for Franchisee's non-compliance with the terms of the Franchise and/or the 1999 Settlement which arose or accrued prior to the date of this Settlement Agreement.
- 1.2 The City agrees to dismiss its currently pending administrative action in which it is seeking to recover liquidated damages for alleged violations of the Franchise and the 1999 Settlement, each party to bear their own costs and fees.
- 1.3 Franchisee will provide all past due annual and quarterly reports mandated under the terms of the Franchise and 1999 Settlement, and all information required to be contained therein, for the period of time March 1999, to the present, to the City within 60 days of the effective date of this Settlement Agreement. Franchisee shall continue to provide the reports required by the Franchise with the City, including but not limited to Section 3.034 of the Franchise Ordinance and section 11.2 of the 1999 Settlement, and will include additional information showing the aggregate number of subscriber requests for service, and the number of such requests that Franchisee has fulfilled.

1.4 Franchisee will provide a technology fund in the amount of \$ 1,000,000 for the City's use at the City's sole discretion to the benefit of the citizens of Oakland, made payable to the City's General Fund in annual installments as follows:

1.4.1 \$400,000 payable within thirty (30) days of the effective date of City Council approval of the Settlement Agreement.

1.4.2 \$200,000 payable within twelve (12) months after the effective date of City Council approval of the Settlement Agreement.

1.4.3 \$200,000 payable within twenty-four (24) months after the effective date of City Council approval of the Settlement Agreement.

1.4.4 \$200,000 payable within thirty-six (36) months after the effective date of City Council approval of the Settlement Agreement.

1.5 Line Extension Requirements.

Franchisee will continue its current rebuild of its cable system to pass all known and existing lawful residential dwelling units within the City, irrespective of residential density, such that Franchisee can provide services to such residential dwelling units without line extension charges. Franchisee will provide line extensions that may be required to reach lawful residential dwellings constructed or established after the completion of such rebuild as

required and pursuant to such terms that are contained in the franchise to be granted Franchisee upon renewal of the Franchise.

1.6 Upon City Council approval of the Settlement Agreement, Franchisee will comply with the following provision concerning service drops:

1.6.1 Aerial Drops: Franchisee will extend the length of aerial drops that must be provided at Franchisee's cost from 150' to 225' for all residents of City who: (1) requested service that required a non-standard drop between February 16, 1999 and the effective date of this Settlement Agreement; and (2) did not previously purchase service. Franchisee may assess to any such subscriber the cost of any portion of the drop exceeding 225'.

1.6.2 Underground Drops: Franchisee will commence, upon City Council approval of the Settlement Agreement, and will continue over the course of the current rebuild of the cable system and to conclude when the rebuild is complete, to contact all known and existing residents in locations where it is actively rebuilding the cable system in underground areas to advise them of the availability of service and the customers' right, upon an agreement to take service, to have an underground drop up to 150' installed at Franchisee's cost. Franchisee may assess to the subscriber the cost of the drop exceeding 150'. Franchisee may assess to the

subscriber any cost to install the drop from the end of the public right-of-way on private property to the exterior wall of the residence in excess of \$1,000.00

- 1.7 To the extent expressly provided, the requirements in sections 1.5 and 1.6 replace the previous service requirement contained in Section 4.008 of the Franchise and Section 5 of the 1999 Settlement. Upon completion of the rebuild, the assessment of costs for drops shall be determined by the terms of the new franchise agreement.
- 1.8 Within sixty (60) days of the approval of this Settlement Agreement, Franchisee will provide service to 1520 Lakeside Drive, and City releases Franchisee from any and all claims related to past or future obligation to provide service to this site; and Franchisee will provide \$1,500 for the City's use in lieu of cable service for 519 17<sup>th</sup> Street.
- 1.9 Except as specifically provided otherwise in the Settlement Agreement, any deficiencies not corrected or correctable in the course of the current rebuild that the Franchisee is obliged to correct under the existing provisions of the Franchise and 1999 Settlement shall remain obligations of the Franchisee. The City reserves all of its rights with respect to such deficiencies, including, but not limited to, the right to enforce any applicable remedies, and the City's rights under the renewal provisions of the Cable Act. Franchisee reserves all its rights with respect to such deficiencies, including, but not limited to the

right to require a notice of the alleged deficiency and an opportunity to cure said deficiency under the procedures of the Franchise and other applicable law.

- 1.10 The City and the Franchisee expressly reserve their rights with respect to claims for unpaid franchise fees, business taxes and utility user taxes that are unknown as of the date of this agreement and including the claim by City for unpaid franchise fees in the amount of \$162,623.00, plus interest and penalties, as specifically set forth in that certain correspondence from Roland E. Smith, City Auditor, to Stacie O. Kelly, dated January 31, 2001.

## **SECTION 2. NO EFFECT ON FRANCHISE REQUIREMENTS**

- 2.1 Except as expressly provided to the contrary, nothing in this Settlement Agreement diminishes or affects the existing and continuing commitments, duties, and obligations, present, continuing, and future, of the Franchisee embodied in the Franchise Ordinance, and all provisions of the Franchise as herein amended remain in full force and effect and are enforceable in accordance with their terms and consistent with applicable law.
- 2.2 Each party to this Settlement Agreement, after consultation with its legal counsel as to the facts surrounding this Settlement Agreement, concludes and agrees that no consideration provided pursuant to this Settlement Agreement can be construed to constitute a franchise fee, nor are any payments made under the terms of this Settlement Agreement subject to any

limitations on franchise fees under applicable law or in the Franchise Agreement. Every party to this Settlement Agreement hereby waives any current or future claim to the contrary.

2.3 The Franchisee agrees that no payment, expenditure, or other consideration provided pursuant to or arising from this Settlement Agreement shall be treated as a cost arising from a condition of the Franchise in accordance with 47 CFR § 76.925.

2.4 The Franchisee acknowledges that except as expressly provided to the contrary in Section 1 hereof, the City reserves all of its rights regarding the pending renewal of the Franchise, and no payment or other consideration provided pursuant to this Settlement Agreement shall be deemed to affect those rights.

2.5 Any breach of or failure to comply with this Settlement Agreement shall constitute a breach of or noncompliance with the Franchise and shall be subject to all of the remedies available under the Franchise and the Cable Act, including but not limited to the renewal provisions of the Cable Act.

### **SECTION 3. DISPUTES REGARDING THIS SETTLEMENT AGREEMENT**

#### **3.1 Scope.**

Remedies for violation(s) of this Agreement are governed by this section; violation(s) of any term or terms of the Franchise and related documents



excluding this Agreement will be determined pursuant to the separate remedies provided in the Franchise.

3.2 Neither Franchisee nor any of its affiliates, nor the City, will file any claim, or raise a defense that challenges any provision of this Settlement Agreement as being contrary to the Cable Communications Policy Act of 1984, 47 U.S.C., §§521, *et seq.*, as amended by the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992), and by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) ("Cable Act"), or to FCC regulations; nor will they participate with any other person or entity in any such challenge. Any such action would constitute a material breach of this Settlement Agreement.

3.3 Violations of this Agreement shall subject the Franchisee to liquidated damages of \$500 per violation per day, each violation deemed a separate breach, except as follows:

3.3.1 Violations of section 1.4 related to the payment to the City of a Technology Fund shall subject the Franchisee to payment of interest.

3.3.2 For violations of section 1.6 of this Agreement, Franchisee is subject to liquidated damages of \$500 per monthly billing cycle per violation. Except upon completion of 70% of the re-build as verified by the City's Cable Television Manager, and upon a determination

of substantial compliance with the requirements of section 1.6 this Settlement Agreement, the amount of liquidated damages for violations of section 1.6 shall be \$100 per monthly billing cycle per violation.

3.4 Notice.

City agrees to provide Franchisee with notice of any violation of this Agreement within 10 business days of discovering a suspected violation. Franchisee agrees that it will not unreasonably withhold information necessary to determine compliance with the terms of this Agreement.

3.5 Procedure.

3.5.1 For violations of section 1.5 of this Agreement, the Franchisee shall have 60 days after the date of notice, or until completion of the rebuild, whichever occurs later, to cure the violation, before liquidated damages begin to accrue on a continuing violation basis pursuant to this section.

3.5.2 For violations of any other provision of this Agreement, Franchisee will have 60 days from the date of notice to cure the violation before liquidated damages begin to accrue on a continuing violation basis pursuant to this section. No violation of Section 1.6.2 shall be deemed to exist; (i) if Franchisee has been unable to secure, after

good faith efforts, applicable permits or necessary access to the subscriber's location, or (ii) with respect to multiple dwelling units where more than 50% of the units within a multiple dwelling unit are taking service from a competitor(s) of Franchisee; or (iii) where a multi-tenant dwelling is taking service from a competitor of Franchisee pursuant to a bulk-rate contract.

3.5.3 Informal Hearing: Within 10 business days of receiving a Notice of Violation from the City alleging a violation of any provision of this Agreement, Franchisee may request an informal hearing with the City's Cable Television Manager to informally resolve the issue in dispute. The City will schedule such a meeting to occur within 10 business days of receiving the request for informal resolution. The 60 day cure period referenced in section 3.5.2 above shall be stayed upon submission of a request for an informal hearing by franchisee pursuant to this subsection.

3.5.4 Appeal: Franchisee shall have 10 business days to appeal the determination of the Cable Television Manager to a Hearing Officer, the Franchisee to bear the cost of the Hearing Officer, otherwise each party to bear their own costs and fees. The determination of the Hearing Officer as to the existence of the violation shall be final. The Hearing Officer shall be selected pursuant to the procedure

provided in the Franchise, and the hearing procedure shall be determined by the Hearing Officer. If the Hearing Officer upholds the City's determination, the accrual of liquidated damages will commence immediately upon termination of the applicable cure period.

#### **SECTION 4. MISCELLANEOUS PROVISIONS**

- 4.1 This Settlement Agreement constitutes the entire agreement of the parties with respect to the settlement of the claims addressed herein. No statements, promises or inducements inconsistent with this Settlement Agreement made by any party shall be valid or binding, unless in writing and executed by all parties. This Settlement Agreement may only be modified by written amendments hereto signed by all parties.
- 4.2 If any part, section, subsection, or other portion of this Settlement Agreement or any application thereof to any person or circumstance is declared void, unconstitutional or invalid for any reason, such part, section, subsection or other portion, or the prescribed application thereof, shall be severable, and the remaining provisions of this Settlement Agreement, and applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect.
- 4.3 If and when any provision of this Settlement Agreement is found to be unenforceable in a final judicial or administrative proceeding, the parties shall

enter into good-faith negotiations with the intent of reaching an agreement that would place the City and cable system users and subscribers substantially in the same position as if this Settlement Agreement were fully enforceable.

4.4 Each signatory to this Settlement Agreement represents that he or she has the authority to enter into this Settlement Agreement.

4.5 This Settlement Agreement is freely and voluntarily given by all of the parties, without any duress or coercion, and after each party has consulted with its counsel. Each party hereto has carefully and completely read all of the terms and provisions of this Settlement Agreement.

4.6 This Settlement Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their successors in interest, assigns, personal representatives and heirs.

4.7 This Settlement Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed the same counterpart.

4.8 The headings in this Settlement Agreement are for convenience of reference only and are not a material part of this Settlement Agreement. They shall not be used in determining the intent of the parties.

4.9 This Settlement Agreement shall be governed by and construed, and the legal relations between the parties determined, in accordance with the laws of the State of California.

4.10 All parties consent to venue and jurisdiction in the U.S. District Court for the Northern District of California and the Alameda County Superior Court.

## **SECTION 5. ACKNOWLEDGMENTS**

5.1. City and Franchisee acknowledge, represent, warrant and confirm the following:

5.2 Advice of Counsel. City and Franchisee have carefully read and understand the effect of this Agreement; each of the City and Franchisee has had the assistance of separate counsel, or has had the opportunity to have the assistance of separate counsel, in carefully reviewing, discussing and considering all terms of this Agreement; and counsel for each of the City and Franchisee, if any, has read and considered this Agreement and advised such party to execute the same.

5.3 No Admission. Franchisee's agreement to the terms of this Settlement Agreement shall not be construed as an admission that Franchisee was in default of any of its obligations under the Franchise Documents or Applicable Law.

5.4 Authorization. City and Franchisee each has full and complete authorization and power to execute this Agreement in the capacity herein stated; and this Agreement is a valid, binding and enforceable obligation of each of the City and Franchisee and does not violate any law, rule, regulation, contract or agreement otherwise enforceable by any of the City and Franchisee.

IN WITNESS WHEREOF, this Settlement Agreement is executed by the parties as follows:

AGREED TO THIS 16 DAY OF July, 2002.

**City of Oakland,  
a municipal corporation of California**

By: Robert E. Ball  
City Manager

**ATTEST:**

Celia Lloyd  
City Clerk

**AT&T Broadband HC of Delaware, LLC**

By: Ullrich  
Its: Senior Vice President

**APPROVED AS TO FORM AND LEGALITY:**

Bernard J. O'Connell  
City Attorney

## **MEMORANDUM OF UNDERSTANDING**

THIS MEMORANDUM OF UNDERSTANDING is entered into this 16th day of July, 2002, by and between:

AT&T Broadband HC of Delaware, LLC, a Delaware corporation ("Franchisee");  
and

THE City of Oakland, California ("City").

WHEREAS, Franchisee and the City have been negotiating the terms and conditions for the renewal of the existing cable franchise in an informal process; and

WHEREAS, the parties intend this Memorandum of Understanding to express their mutual understanding of the terms and principles that Franchisee has offered in that informal process and that the City has accepted as a result of those negotiations; and

NOW, THEREFORE, the parties agree and promise to negotiate in good faith to develop a franchise agreement as follows.

### **1. TERMS OF RENEWAL**

The parties agree that any franchise agreement that results from the informal negotiations concerning the renewal of the existing franchise held by Franchisee will incorporate the substantive terms and principles set forth in the consolidated proposal described in the letter from AT&T Broadband to the City Manager dated June 12, 2002, a copy of which is attached hereto and incorporated herein as Attachment 1.

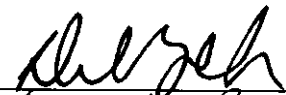
This agreement is for purposes of an informal renewal only and may not be used in the context of formal renewal proceedings provided for by 47 U.S.C. § 546(a)-(h) or other formal legal proceedings between the parties.;



2. **FINALIZING AGREEMENT**

The parties acknowledge that there are additional issues to be negotiated, and agree to use their best efforts in the informal process to finalize a franchise agreement to renew the existing franchise held by Franchisee by October 30, 2002.

As witness the execution of this Memorandum of Understanding by the parties, as of the date above written. This document may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This document shall be effective immediately upon execution by both parties.

  
\_\_\_\_\_  
Senior Vice President  
AT&T Broadband HC of Delaware, LLC

  
\_\_\_\_\_  
City Manager  
City of Oakland, California

M.P. Witherington, Jr  
Vice President, Government Affairs  
P.O. Box 5147  
San Ramon, CA 94583  
925-973-7035

June 12, 2002

Mr. Robert Bobb  
City Manager  
City of Oakland  
1 Frank H Ogawa Plaza, 3<sup>rd</sup> Floor  
Oakland, CA 95612

*Re: AT&T Broadband Cable franchise proposal for Oakland, CA*

Dear Mr. Bobb:

As requested, the following provides a consolidated proposal from AT&T Broadband HC of Delaware, LLC ("AT&T") regarding principal terms of a new cable system franchise for the City of Oakland ("City") under the informal negotiation process. In return, the City agrees to drop all claims for past non-compliance, known or unknown, and to grant the City's consent to the change of control of AT&T Broadband HC of Delaware, LLC ("Franchisee") from AT&T Corp. to AT&T Comcast Corp. within the statutory 120 day deadline.

<b>Term of Franchise</b>	13 years
<b>PEG/I-NET funding</b>	Guaranteed \$17.4M revenue over 13 years <sup>1</sup>
<b>Cash Advances</b>	\$2.5M of the \$17.4M upon approval of the franchise
<b>Interest Cost Funded by AT&amp;T</b>	\$3M <sup>2</sup>
<b>Rebuild Completion</b>	4 years, with 70% completed in 3 years
<b>Service Area</b>	The network will be rebuilt to reach all known and existing residential subscribers residing in lawful dwelling units within the City, irrespective of residential density. Line extensions that may be required to reach new subscribers in new residential areas developed after the completion of the rebuild will be provided pursuant to the

<sup>1</sup> See Item 3 below.

<sup>2</sup> Estimate based on \$2.5 million advance, as well as expected annual revenues and expected I-Net construction schedule and costs.

	terms of the new franchise agreement.
<b>I-Net Fiber Completion</b>	5½ years
<b>Compliance Disputes</b>	All claims by the City are dismissed

As we discussed, AT&T will construct the I-Net fiber runs at incremental cost to the city concurrently with the subscriber network rebuild, as well as make initial funding grants for PEG and I-Net equipment. AT&T will provide the City with a \$2.5 million cash advance for PEG and I-Net use within 30 days after approval of the franchise. This will permit the City to provide immediate benefits to residents as well as begin building a communications infrastructure for the City's future. Cash advances and I-Net construction costs in excess of the receipt of revenues in the early years of the franchise will result in estimated financing costs to AT&T of \$3 million. These financing costs will be borne by AT&T pursuant to (3) below.

In addition, AT&T agrees to the following:

1. AT&T will "freeze" all regulated basic service rates until such time as the rebuild is completed on a node-by-node basis. Stated another way, customers of our basic service tier (does not include expanded basic service tier) will not receive an increase in their basic rate until their individual area, or node, is rebuilt.
2. AT&T will extend its normal drop policy for aerial drops from 150' to 225' on a one-time basis solely for those residents who previously requested and were not provided service by AT&T based on the resident's unwillingness to pay the cost of the drop beyond 150'.<sup>3</sup> Costs for drops beyond 225' will remain the responsibility of the subscriber. AT&T and the City shall meet and develop a final list of eligible customers within 30 days of the approval of the franchise. Both parties agree that this list is not expected to exceed 300 subscribers. This settles the concerns the City expressed over the obligations of the AT&T regarding serviceable homes in Oakland pursuant to the 1999 Settlement Agreement. This group of residents will have up to one year from the signing of the franchise renewal to exercise this option.
3. AT&T will guarantee the City \$17.4 million in PEG and I-Net revenues over the life of the 13-year franchise. AT&T may, at its discretion, use any additional recovery of funds that may occur under the proposed pass-through formula to offset its carrying costs and other unrecovered expenses related to the provision of PEG and I-Net services to the City. If the pass-through formula is not expected to recover \$17.4 million over 13 years, AT&T can request, and the City

<sup>3</sup> This does not include underground drops. During the rebuild, AT&T will contact the property owner and provide the underground drop, up to a maximum of 150', if the property owner grants permission. Subscribers requesting underground drops before the rebuild is completed in their area will be charged the cost of providing the drop.

cannot unreasonably deny, an increase in the pass-through necessary to recover \$17.4 million over the life of the franchise.

4. AT&T will provide the City a \$1.0 million technology grant for the City's use at its sole discretion to benefit the citizens of Oakland. These funds shall be due over four years, pursuant to the following schedule. All payments shall be made within 30 days after the due date.
  - a. \$400,000 upon the effective date of the new Franchise Agreement
  - b. \$200,000 12 months after the effective date of the new Franchise Agreement
  - c. \$200,000 24 months after the effective date of the new Franchise Agreement
  - d. \$200,000 36 months after the effective date of the new Franchise Agreement
5. AT&T will provide a \$1.0 million security bond within 30 days after the franchise is approved, to be maintained throughout the term of the franchise. There will be no restrictions on the City's ability to assess the bond as may be necessary to recover fees, costs, or liquidated damages incurred by the City in the event AT&T fails to perform pursuant to the terms of the franchise, provided that the City properly notices AT&T of the alleged violation and provides an opportunity to cure pursuant to the terms of the Franchise. The City further agrees to provide AT&T no less than 48 hours notice prior to drawing on the bond. This bond will supercede any requirements for cash deposits, letters of credit or other financial instruments required under Section 7.002 (Security Account) of the current franchise. However, this bond is not a substitute for any requirements that may be negotiated by AT&T and the City to provide a performance bond for the rebuild of the cable system.

Please call me if this does not agree with your understanding of our recent discussions.

Sincerely,

*M.P. Witherington, Jr.*

M.P. Witherington, Jr

cc: Don Schena  
Senior Vice President  
Bay Area Market