

FIRST AMENDMENT TO FRANCHISE AGREEMENT

THE FIRST AMENDMENT TO FRANCHISE AGREEMENT (the "First Amendment") executed this 28 day of December, 2001 ("Effective Date"), by and between the City of Atlanta, Georgia, a municipal corporation, hereinafter referred to as "City" and MediaOne of Colorado, a Colorado corporation, hereinafter referred to as "Franchisee."

WHEREAS, the City and GCTV SUB 2 CORPORATION, a Subsidiary of Southern Multimedia Communications, Inc., renewed the existing franchise and entered into a cable franchise agreement ("Cable Franchise Agreement") dated January 1, 1995; and

WHEREAS, the City duly granted a nonexclusive, revocable, franchise to Franchisee to construct, reconstruct, operate, and maintain a cable communications system to provide cable service within the public rights of way of the City; and

WHEREAS, Franchisee has been operating such system pursuant to its Franchise for the benefit of the city and all persons located therein; and

WHEREAS, pursuant to Ordinance 99-O-1800, the Mayor and the Atlanta City Council have authorized a change in control of Franchise subject to the terms of a change of control agreement ("Change of Control Agreement") which, among other things, authorizes the transfer of the Franchise held by Franchisee to a subsidiary of AT&T Corp; and

WHEREAS, the City, after due evaluation, has determined that it is in the best interest of the City and its residents to amend the franchise of Franchisee by entering into this First Amendment; and

WHEREAS, such amendments shall make it possible for the City to provide for community technology initiatives which will benefit the City and its residents; and

WHEREAS, the Atlanta City Council has adopted and the Mayor has approved Ordinance 99-O-1930, which authorizes an amendment of the Cable Franchise Agreement and authorizes the mayor execute this Amendment on behalf of the City.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants contained herein, the parties do mutually agree to amend the Cable Franchise Agreement as follows:

1. **Section 9.15 is hereby deleted in its entirety, and Franchisee shall have no further obligations and no liability for the provisions contained therein.**
2. **Section 11.1 is hereby deleted in its entirety and shall be replaced with the following Section 11.1**
 - 11.1 Access Channels Franchise shall provide: six (6) access channels for City government, education, and public access use, with the uses and users of such

channels to be designed by the City. The City reserves the right to change the category of access designations amongst government, educational, and public access. After the capacity of the cable system exceeds seventy-eight (78) channels, by any technological means, the Company is required to dedicate ten percent (10%) of the additional channel capacity for future access use. Such additional access channels shall be made available for public, educational and or government access within six (6) months of a written request from the City. Such additional capacity shall be dedicated for the type of access specified by the City. All active access channels shall be placed on the basic tier of service, unless both parties mutually agree otherwise. Access channels may be used to transmit open and closed circuit programming. The Franchisee may use access channel capacity in accordance with federal law.

3. Section 11.3 is hereby deleted in its entirety and shall be replaced with the following Section 11.3:

11.3 Access Equipment. The Franchisee agrees to provide to the City one million, nine hundred fifty thousand dollars (\$1,950,000) for initial equipment and for facilities renovation for government and public access and the community technology initiatives that may be implemented by the City which amount will not be deducted from the franchise fee or passed through to subscribers. Beginning in year four (4) of the Franchise, the Franchisee will provide one million, four hundred thousand dollars (\$1,400,000) for replacement equipment for government and public access and for equipment and facilities renovation for the community technology initiatives that may be implemented by the City, and this amount will not be deducted from the franchise fee, but may in the Franchisee's sole discretion be passed through to subscribers and such amounts shall not be itemized. The City will provide to the Franchisee, at least sixty (60) days prior to the issuance of a purchase order or other contractual agreement for equipment or renovation costs, a schedule of such equipment and costs to be paid by the Franchisee from the funds set forth above. The Franchisee shall provide requested funds within thirty (30) days of receipt of such schedule and cost.

4. Section 11.5 is hereby deleted in its entirety and shall be placed with the following Section 11.5:

11.5 Access Option. In year eight (8) of the franchise term or thereafter, if the City determines that there is a demonstrable need for additional funds for public, educational, and government access operations, services, equipment, and facilities, or for community technology initiative operations, services, equipment, and facilities, and such costs are approved by the City Council, the Franchisee shall collect such funds through a specific charge on the subscriber bill. Such amount shall not be deducted from the franchise fee.

5. Add a new Section 11.8.7 which shall read:

11.8.7 The Franchisee shall, to the extent practicable, employ the publicity activities specified in this Section to promote the awareness and utilization of the City's community technology initiative.

6. Sections 11.10.1 and 11.10.2 are hereby deleted in their entirety and shall be replaced with the following new Sections 11.10.1 and 11.10.2:

11.10.1 The Franchisee shall provide free non-premium basic cable programming service as defined in the FCC regulations, free converters capable of receiving closed-circuit programming on access channels, installation of one (1) free outlet and a free cable drop capable of supporting multiple reception points to all City-owned or managed facilities, all facilities established pursuant to the community technology initiative, all schools under the jurisdiction of the Atlanta Public School System, and all public libraries, provided that such institutions shall pay for the cost of internal wiring, installation of any additional outlets, aerial drop cable (and installation thereof) in excess of 300 feet, any underground drop cable (and installation thereof), and any necessary plant extension. Charges to the institutions for construction performed by the Franchisee shall not exceed costs to the Franchisee. The Franchisee shall perform standard installations within sixty (60) days of receiving a written request from an institution specified herein, provided, however, that Franchisee can obtain all necessary permits and easements. The Franchisee shall provide and install, free of charge, up to ninety (90) cable modems and provide cable modem service to the designated public municipal sites and/or facilities utilized by the City of Atlanta for its community technology initiative which lie within 300 feet of the Franchisee's cable feeder plant. At its sole discretion, the City of Atlanta may permit the Franchisee to install a maximum of twenty-five (25) cable modems and routers at designated sites for installation during a calendar year. All ninety (90) cable modems and routers, however, shall be installed within seven years from the date of the execution of this contract. The cable modems and residential cable modem service provided shall be utilized for a community technology initiative to provide public Internet access at such designated sites. The Franchisee shall perform installations within sixty (60) days of receiving written request by the City of Atlanta. The Franchisee shall provide the City of Atlanta with one Linksys Etherfast Cable/DSL Router or its functional equivalent at each site designated by the City of Atlanta, Mayor's Office of Community Technology to receive a cable modem and residential cable modem service per this Section 11.10.1. If as a result of changes in technology, the routers provided by Franchisee are no longer compatible with the Franchisee's cable modem service, Franchisee agrees to provide the City of Atlanta with equipment of equal value that will allow for the cable modem signal to be networked as agreed. The City of Atlanta agrees not to use the cable modems, residential cable modem service and all other equipment provided by the Franchisee as a result of this Agreement for any unlawful purpose, post, transmit or disseminate illegal material, or for any other commercial purpose. The City of Atlanta or its designee shall be responsible for the maintenance of the routers and end-user equipment. The

Franchisee shall be responsible for the maintenance of the cable modem and the residential cable service and shall manage capacity on the System.

11.10.2 Notwithstanding the above, the Franchisee shall provide free non premium basic cable programming service as defined in the FCC regulations, free converters capable of receiving closed-circuit programming service on access channels, and a free 300 foot cable drop capable of supporting multiple reception points to the designated locations listed in Appendix O, attached hereto and incorporated by reference, provided that such institutions shall pay for the cost of internal wiring, installation of any additional outlets, aerial drop cable (and installation thereof), in excess of 300 feet, any underground drop cable (and installation thereof), and any necessary plant extension. Authorized charges to the institutions for constructions performed by the Franchisee shall not exceed costs to the Franchisee. The Franchisee shall perform standard installations within sixty (60) days of receiving a written request from an institution specified herein, provided, however, that Franchisee can obtain all necessary permits and easements.

7. Section 11.12 is hereby deleted in its entirety and shall be replaced with the following new Section 11.12:

11.12 Minority Programming. The Franchisee shall allocate sufficient resources to implement the following to strengthen and increase local minority programming:

- (i) Conduct an annual survey of producers of local minority programming;
- (ii) Distribute the results of the survey to programmers from whom the Franchisee purchases programming;
- (iii) Every two years, conduct a conference at the Franchisee's Atlanta facilities or other appropriate location to bring together local producers of minority programming and buyers of programming.
- (iv) In the event that the City elects to establish a minority programming service, the Franchisee shall cablecast such minority programming service on one of the channels identified in Section 11.1 of this First Amendment. If the City elects to redesignate said channel from public, educational, or governmental access channel to a commercial channel, Franchisee shall agree to such redesignation. Such programming service may be operated for any purpose the City shall designate, including a commercial purpose, and may be operated by the City or by an entity to be designated by the City. The funds described in Section 11.14 may be utilized to fund the planning, implementation, and operation of the minority programming service.

8. Add a new Section 11.13 which shall read:

11.13 Atlanta Community Technology Initiative. The funds described in Section 11.14 shall be utilized to fund the planning, implementation, and operation of a community technology initiative. The community technology initiative shall be established and operated at the sole discretion of the City. Except as otherwise provided in this First Amendment, Franchisee shall have no obligation for the operation, funding, staffing, or maintenance of this technology initiative.

9. Add a new Section 11.14 which shall read:

11.14 Disbursement of Funds.

- (i) The Franchisees shall make available to the City a working fund of Eight Million, One Hundred Thousand Dollars (\$8,100,000.00) to be utilized by the City. The City shall use these funds for the planning and implementation of such community technology initiatives that the City may elect, in its sole discretion, and Franchisee waives any right that may exist under applicable law to challenge the City's use of the funds. Franchisee shall disburse the funds to the City within ten days of a request for the funds by the City. Sums to be paid from such fund shall not be considered additional franchise fee payments. Upon a failure of Franchisee to disburse funds in accordance with this provision, interest shall accrue upon the amount owed at the legal rate of interest equal to the interest rate at the City's primary depository bank. Any such failure to promptly disburse such funds shall constitute a material breach of this First Amendment, and the City reserves its right to pursue any and all remedies available to the City in accordance with applicable law in addition to the interest charge referenced in this Section.
- (ii) The parties agree that Franchisee, in its sole discretion, may recoup costs of no more than One Million Nine Hundred Thousand Dollars (\$1,900,000.00) from subscribers to the extent allowed by federal law as was contemplated by the former M-Net provisions, provided that this be done at a monthly basic rate that shall not exceed the rate currently utilized, and further provided that such amount shall not be itemized.

10. Section 23.4 is hereby deleted in its entirety and shall be replaced with the following new Section 23.4:

23.4 Schedule of Liquidated Damages. Pursuant to Section 23.1 above, the following liquidated damages shall be chargeable to the security fund on a per day basis. The determination of the date of commencement of the liquidated damages shall be determined at the time of the decision by arbitration panel:

1. for failure to complete construction or extend service in accordance with Franchise for reasons not beyond Franchisee's control: \$1,000/day for each day the violation continues;
2. for failure to make franchise fee payments as required: \$375/day for each day the violation continues;
3. for failure to comply with provisions of the Franchise for public, educational and governmental access: \$250/day for each day the violation continues;
4. for failure to provide the services outlined in Section 11.10.1 and 11.10.2 of this First Amendment related to cable drops and monthly service for the community technology initiative for reasons not beyond Franchisee's control: \$250/day for each day the violation continues;
5. for violation of consumer protection requirements and customer service standards required by this Franchise, the Ordinance, or by FCC regulation: \$250/day per standard violated;
6. for violation of the Equal Employment Opportunity and Equal Business Opportunity requirements of the Franchise and the Ordinance: \$250/day for each day the violation continues; and
7. for violation of other material provisions of this Franchise or ordinance: \$250/day for each day the violation continues.

11. Section 23.5 is hereby deleted in its entirety and shall be replaced with the following new Section 23.5:

23.5 The parties agree that they have resolved liquidated damages issues for all franchise violations occurring prior to the Effective Date of this Agreement. However, the City does not waive and expressly reserves all rights and remedies available to the City under applicable law for Franchise violations occurring after the Effective Date of this Amendment.

12. Add a new Section 23.6 which shall read:

23.6 No damages shall be chargeable for violations which are minor, isolated, trivial or de minimis in nature, or which occur as a result of Force Majeure. As used herein the term "Force Majeure" shall mean, without limitation, the following: acts of God; strikes, orders of any kind of the City, of the government of the United States of America or the State or any of their respective departments, agencies or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lighting; earthquakes; fire; storms; floods; washouts; droughts; arrests; restraints of government and people; civil disturbances; explosions; partial or

entire failure or unavailability of utilities; or any other cause or event not reasonably within the control of the Franchisee.

13. Section 30.0 is hereby deleted in its entirety and shall be replaced with the following new Section 30:

30.0 NOTICES

All notices from Franchisee to the City pursuant to this Agreement shall be sent to the City of Atlanta, Georgia, Atlanta City Hall, Suite 2500, 55 Trinity Avenue, S.W., Atlanta, Georgia 30335, Attention: Cable Franchise Coordinator, and an additional copy to the same address marked Attention: Director, Office of Marketing and Communications. All notices to Franchisee shall be sent to MediaOne of Colorado, 2925 Courtyards Drive, Norcross, GA 300761, Attention: Vice President, Legal and Government Affairs. The parties shall have the right from time to time during the term of this Franchise to designate other officers or employees to receive such notices, and to change their respective addresses, by written notice as set forth above.

14. Section 37 is hereby omitted in its entirety.

15. CAPTIONS

The captions to sections throughout this Amendment are intended solely to facilitate reading and reference to the sections and provisions of this Amendment. Such captions shall not affect the meaning or interpretation of this Amendment.

16. NO JOINT VENTURE

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to act, nor shall either party act, toward third persons or the public, in any manner which would indicate any such relationship with the other.

17. ENTIRE AGREEMENT

This Amendment, the Franchise and all attachments thereto, and the Cable Ordinance and all attachments thereto, as incorporated herein, represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof, supersede all prior oral negotiations between the parties, and can be amended, supplemented, modified, or changed as provided for in this Amendment, the Franchise and the Ordinance.

18. SEVERABILITY

If any section, subsection, sentence, paragraph, term or provision of this Amendment or the Franchise is determined to be illegal, invalid or unconstitutional upon final adjudication by any court of competent jurisdiction, or by any state or federal regulatory agency having jurisdiction

thereof, such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect.

19. RIGHT OF INTERVENTION

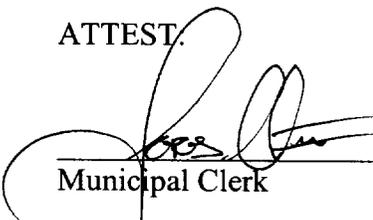
The City shall have the right of intervention in any suit or proceeding to which the Franchisee is Party.

20. RENEGOTIATION

Renegotiation shall take place according to the provisions of the Ordinance.

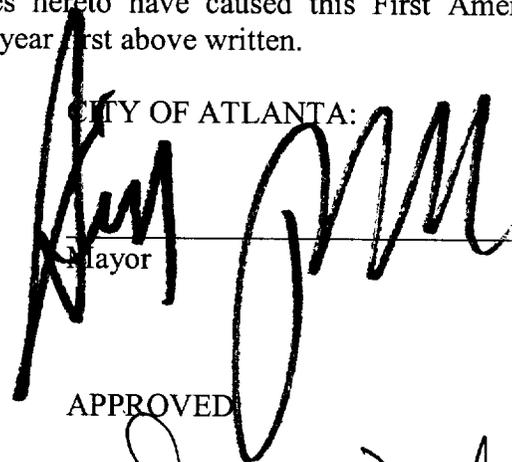
IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to Cable Franchise Agreement as of the day and year first above written.

ATTEST:



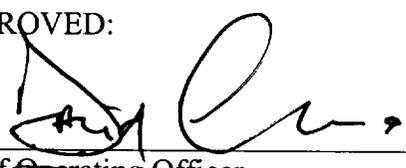
Municipal Clerk
DEPUTY MUNICIPAL CLERK

CITY OF ATLANTA:



Mayor

APPROVED:



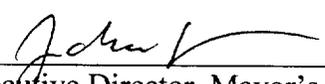
Chief Operating Officer
Financial

APPROVED

By: 

Chief Financial Officer
Operating

RECOMMENDED:



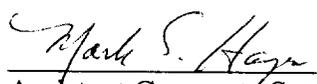
Executive Director, Mayor's
Office of Community Technology

APPROVED AS TO FORM:



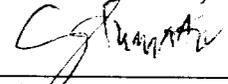
Assistant City Attorney

ATTEST:



Assistant Corporate Secretary

MediaOne of Colorado, Inc.



Senior Vice President



**CITY COUNCIL
ATLANTA, GEORGIA**

99-O-1930

**A SUBSTITUTE ORDINANCE (3)
AS AMENDED BY CITY UTILITIES COMMITTEE
and AS AMENDED by the ATLANTA CITY COUNCIL.**

**AN ORDINANCE AUTHORIZING THE MAYOR
TO AMEND THE CABLE FRANCHISE
AGREEMENT BETWEEN THE CITY OF
ATLANTA AND MEDIAONE OF COLORADO,
INC., SUCCESSOR TO THE CABLE FRANCHISE
AGREEMENT ENTERED INTO ON JANUARY 1,
1995, BETWEEN THE CITY AND SOUTHERN
MULTIMEDIA COMMUNICATIONS, INC.,
AND FOR OTHER PURPOSES.**

WHEREAS, on January 1, 1995, the City of Atlanta and Southern Multimedia Communications, Inc., a predecessor of MediaOne of Colorado, Inc., ("Franchisee") entered into a Franchise Agreement for the construction, reconstruction, operation and maintenance of a cable communications system within the City of Atlanta; and

WHEREAS, the City and the Franchisee ("parties") have completed a comprehensive review and re-negotiation of PEG access, M-Net, and other relevant provisions of the Franchise Agreement; and

WHEREAS, said renegotiations have resulted in free cable and high-speed modem Internet access to city-owned facilities, Atlanta public schools and libraries; provision for more minority programming on the cable system; and funding for some new community technology initiatives, and

WHEREAS, the parties have agreed on \$8.1 million as the value of some new community technology initiatives; and

WHEREAS, the City has established a Blue Ribbon committee that will offer opportunities for the City Council, Atlanta Board of Education, Atlanta-Fulton Library Board, non-profit organizations, and other community based organizations interested in positively using community technology; and

WHEREAS, the City Council which is the policy making body has not had an opportunity to debate the merits of how to spend the one time revenues from the releasing of the access channels; and

WHEREAS, the U.S. Congress did create the Workforce Investment Act of 1998 and Governor Barnes did appoint a Workforce Investment Board for the purpose of preparing youth and adults for entry into the labor force and to provide for the planning, implementation and ongoing oversight of a comprehensive state workforce development

CITY COUNCIL
ATLANTA, GEORGIA



system designed to improve workforce training, employment, literacy, and vocational education and the need exist to coordinate regionally; and

WHEREAS, the City Council would like for the Atlanta Regional Commission's (ARC) survey on workforce development to be reviewed by city staff to determine if any ideas can be gathered and used; and

WHEREAS, the results of said review along with the review of other ascertainment studies will assist in determining the technology needs of the Atlanta community;

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

Section 1: That the Mayor be and is hereby authorized to execute an amendment to the Franchise Agreement which provides for the renegotiated items as described herein.

Section 2: That the City Attorney be and is hereby directed to prepare an appropriate amendment agreement for execution by the Mayor, to be approved by the City Attorney as to form.

Section 3: That all funds received pursuant to the Cable Franchise Amendment in furtherance of the community technology initiative shall be deposited into an interest-bearing Trust Fund identified as Trust Fund Account and Center Number 3P02 433101 J53X0210SCB0 and said funds shall be expended from Trust Fund Account and Center Number 3P02 5***** D22K0109SCB0 in accordance with the fully executed Cable Franchise Amendment. No more than six percent (6%) of funds received pursuant to the Cable Franchise Amendment shall be spent for initial start-up costs of the community technology initiative.

Section 4: The Mayor's Office will submit a monthly status report to City Council that will outline the activities and expenditures of the community technology initiative. By June 1, 2000, the Mayor's office will submit to the City Council an annual budget for the year 2000 and a three year projected budget and strategic plan for operations.

OMC-Amendment Incorporated 2/23/00 by CPT

A true copy,

Phonda Daughin Johnson
Municipal Clerk, CMC

ADOPTED as amended by Council
APPROVED by the Mayor

February 07, 2000
February 29, 2000