

RESOLUTION NO. 18674

A RESOLUTION OF THE CITY OF BILLINGS, MONTANA, EXTENDING THE CURRENT CABLE TELEVISION FRANCHISE AGREEMENT WITH BRESNAN COMMUNICATION LLC AN ADDITIONAL 90 DAYS IN ORDER TO COMPLETE THE ADOPTION PROCESS OF A NEW ORDINANCE AND FRANCHISE AGREEMENT.

WHEREAS the City Council of the City of Billings previously approved a Transfer Agreement issuing a non-exclusive Cable Television Franchise to Bresnan Communications, LLC through Resolution No. 03-17956; and

WHEREAS the City of Billings and Bresnan Communications, Inc. are currently negotiating a renewal of the existing Cable Television Franchise; and

WHEREAS the parties desire to continue the existing Cable Television Franchise which expired on December 17, 2007; and

WHEREAS the City of Billings and Bresnan Communications previously extended the Cable Television Franchise on December 11, 2007, but additional time is now required to complete the process; and

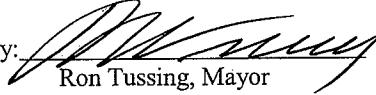
WHEREAS a Ninety (90) day extension of the current Franchise Agreement is in the best interests of the City, the public and Bresnan to allow modifications of the current Franchise Agreement to be completed.

NOW, THEREFORE, BE IT RESOLVED:

1. That the current Transfer Agreement dated February 24, 2003, attached hereto as Exhibit "A" between the City and Bresnan, is hereby extended for a Ninety (90) day period of time up to and including May 12, 2008.
2. All other terms, conditions and obligations of such Transfer Agreement and the current Cable Television Franchise dated October 17, 1988, granted to and transferred to several predecessors of Bresnan shall remain in full force and effect during this extension of time.

APPROVED AND PASSED by the City Council of the City of Billings, MT, this 11th day of February, 2008.

CITY OF BILLINGS

By: 
Ron Tussing, Mayor

ATTEST:

By: Cari Martin
Cari Martin, City Clerk



TRANSFER AGREEMENT

THIS AGREEMENT is made this 24 day of February, 2003, by and between:

The City of Billings, Montana, a municipal corporation ("City");
Bresnan Communications, LLC, a Delaware Limited Liability Company ("Bresnan").

RECITALS

WHEREAS, Comcast of Montana III, Inc. ("Comcast"), f/k/a Billings Tele-Communications, Inc., locally known as AT&T Broadband ("AT&T"), currently holds a non-exclusive franchise that authorizes the use and occupation of the public rights-of-way for the provision of cable services through an ordinance codified in Sections 7-901 through 7-909, Billing Montana City Code ("Franchise"); and

WHEREAS, pursuant to an Asset Purchase Agreement between Bresnan Broadband Holdings, LLC and AT&T Broadband parties, dated, April 5, 2002, amended and restated as of February 3, 2003, Bresnan Broadband Holdings, LLC will acquire the Franchise and assets currently held by AT&T and the cable system serving the City ("System") and immediately transfer the Franchise, assets, and System to Bresnan Communications, LLC (the "Transaction"); and

WHEREAS, Billing Montana City Code Section 7-904(e) provides that the prior approval of the City is required for the Transaction; and

WHEREAS, on or about April 17, 2002, AT&T and Bresnan filed an FCC Form 394 with the City and requested that the City approve the Transaction (the "Transfer Application"); and

WHEREAS, Bresnan has represented to the City that Bresnan is financially, legally and technically qualified to maintain and operate the System; and

WHEREAS, Bresnan has represented to the City that the Transaction will result in no reduction in the terms and conditions of service and operation of the System; and

WHEREAS, Bresnan has agreed to comply with the Franchise and applicable law from and after the completion of the Transaction; and

WHEREAS, the City's cable franchise is currently scheduled to expire on December 16, 2007; and

WHEREAS, all parties reserve all their respective rights under federal law with respect to any renewal of the Franchise; and

WHEREAS, on July 8, 2002, the City acted timely under federal law to approve the Transfer Application and Bresnan and the City have mutually agreed to withdraw that action and to adopt a new resolution of approval of the Transaction to clarify certain provisions; and

WHEREAS, relying on the written representations provided by Bresnan and AT&T, the City is willing to grant its consent to the Transaction, subject to the terms and conditions set forth herein;

NOW, THEREFORE, THE PARTIES DO HEREBY AGREE as follows:

1. AGREEMENT TO ENTER INTO TRANSFER AGREEMENT

1.1. The foregoing recitals are true and correct and are incorporated herein by reference.

1.2. Bresnan and the City hereby agree to enter into this Transfer Agreement subject to the City's repeal of Resolution No. 02-17862, passed July 8, 2002 and adoption of the substitute resolution attached hereto.

2. ACCEPTANCE OF FRANCHISE OBLIGATIONS

2.1 **Acceptance:** Bresnan unconditionally accepts and agrees to abide by the terms and conditions of the Franchise, and will assume responsibility for satisfying all obligations under the Franchise and applicable law.

2.2 **Past Performance:** Bresnan hereby agrees that it shall be liable for any and all previously accrued but unfulfilled obligations to the City under the Franchise Agreement and applicable law, whether known or unknown. Except as specified in paragraph 2.4, the City is not presently aware of any alleged default or breach by AT&T.

2.3 **Valid Franchise:** The City warrants that the Franchise is valid and remains in full force and effect.

2.4 **Cable Modem Fees:** The parties understand that, prior to the time Bresnan filed its application for approval of the Transaction, AT&T stopped including revenue from cable modem service within gross revenues for purposes of determining the franchise fee owed to the City under the Franchise. The parties also understand that the letter sent to Comcast Corporation [sic], dated January 30, 2003, alleging failure to comply with the Franchise ("Comcast Letter") is withdrawn and rescinded upon the Effective Date of this Agreement. It is understood that Bresnan intends to continue this practice, but that neither Bresnan nor the City waive any rights either may have regarding this issue as a result of the Transaction or of the withdrawal and rescission of the Comcast Letter. The parties agree that the approval of the Transaction is not an endorsement of the acts of AT&T going back to the date of AT&T's alleged violation or the intended actions of Bresnan, nor shall the approval of the Transaction act to permit Bresnan to raise any defense that could not have been raised by AT&T.

2.5 **Insurance:** From and after the effective date of the transfer, Bresnan will have in place the insurance, indemnities, bonds, and other securities required under the Franchise and applicable law. It will provide proof that it has obtained the same within thirty (30) days of the closing of the Transaction contemplated in the Transfer Application.

2.6 **Record Retention:** Bresnan shall maintain any records for the period January 1, 2002 forward, previously maintained by AT&T pertaining to compliance with the Franchise.

2.7 **Local Office:** Bresnan agrees that it will maintain a local office in the City with similar capabilities at a minimum as AT&T's existing office throughout the remaining term of the Franchise and that functions of the local office shall at a minimum comply with the FCC customer service requirements, 47 CFR 76.309.

3. REPRESENTATIONS AND WARRANTIES

3.1 Bresnan represents and warrants that that it is legally, technically, and financially, qualified to assume the obligation in the Franchise.

3.2 Bresnan represents and warrants that it intends to provide cable modem service in Billings after the closing of the Transaction so long as the Billings market supports the service. Bresnan further warrants that it is taking all steps necessary so that it can provide continuous, uninterrupted service to Billings's cable modem subscribers.

3.3 Bresnan agrees that it will provide cable modem subscribers reasonable notice before making any change in cable modem service that would affect the e-mail addresses or domain names.

4. ADDITIONAL CONDITIONS

4.1 In the event the Transfer closes on terms that are materially different from the terms disclosed to the City and which are detrimental to the City or Grantee's ability to comply with the Franchise, then any City consent to the Transaction shall be void and of no force and effect, and the Transaction deemed to have been timely denied.

4.2 The parties agree that, if the City adopts a Resolution in the form attached hereto, the City's action will be treated as being within any deadline for action established by federal law.

5. BREACHES

Any breach of this Transfer Agreement shall be deemed a breach of the Franchise Agreement. Any such breach shall be subject to all remedies available for a breach of the Franchise Agreement, in addition to any other remedies the parties may have under this Transfer Agreement at law or equity.

6. MISCELLANEOUS PROVISIONS

6.1 **Effective Date:** This Transfer Agreement shall be effective and binding upon the signatories upon signing by all signatories.

6.2 **Binding Acceptance:** This Transfer Agreement and the Franchise shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, lawful transferees, successors and assigns. The promises and obligations herein shall survive the expiration date hereof. Nothing herein shall limit the City's existing rights under the Franchise to review and approve or deny a transfer of the Franchise consistent with federal law.

6.3 **Voluntary Agreement:** This Transfer Agreement is freely and voluntarily given by each party, without any duress or coercion, and after each party has consulted with its counsel. Each party has carefully and completely read all of the terms and provisions of this Transfer Agreement.

6.4 **Entirety of Agreement:** The Franchise and this Transfer Agreement represent the entire understanding of the parties and supercedes all other agreements between the parties.

6.5 **Severability:** If any term, condition, or provision of this Transfer Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

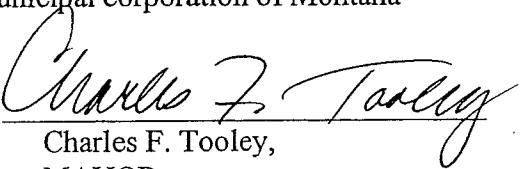
6.6 **Counterparts:** This Transfer Agreement may be executed in several counterparts, each of which when so executed shall be deemed to be an original copy, and all of which together shall constitute one agreement binding on all parties hereto, notwithstanding that all parties shall not have signed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

6.7 **Governing Law:** This Transfer Agreement shall be governed in all respects by the law of the State of Montana.

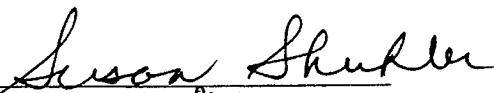
6.8 **Captions and References:** The captions and headings of sections throughout this Transfer Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Transfer Agreement. Such captions shall not affect the meaning or interpretation of this Transfer Agreement.

AGREED TO THIS 24th DAY OF FEBRUARY, 2003

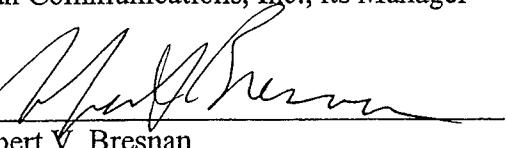
The City of Billings, Montana
a municipal corporation of Montana

By: 
Charles F. Tooley,
MAYOR

ATTEST:


Susan Shukler
City Clerk Deputy City Clerk

Bresnan Communications, LLC
By: Bresnan Communications, Inc., its Manager

By: 
Robert V. Bresnan
Senior Vice President and General Counsel

APPROVED AS TO FORM:


Brent Brooks
City Attorney