

RESOLUTION NO. 00-269

A RESOLUTION CONDITIONALLY APPROVING THE TRANSFER OF AN EXISTING CABLE TELEVISION FRANCHISE, "FRANCHISE", HERETOFORE GRANTED BY DELTA CITY TO TCI OF INDIANA, INC., PURSUANT TO DELTA CITY ORDINANCE NO. 90-122 AND RESOLUTION NOS. 98-257 AND 98-258 AND SETTING FORTH TERMS AND CONDITIONS FOR APPROVING SUCH TRANSFER OF SAID FRANCHISE FROM TCI OF INDIANA, INC. TO MALLARD CABLEVISION, L.L.C.

RECITALS

The City Council of the City of Delta, Utah, referred to herein as the "City Council," hereby recites the following as the basis for adopting this resolution:

WHEREAS, the City Council has heretofore adopted ordinances (Ordinance No. 90-122, dated February 26, 1990, Ordinance No. 90-126 dated March 26, 1990, and Ordinance No. 92-142 dated February 24, 1992) granting a cable television franchise, (said ordinances collectively being referred to hereinafter as "franchise") to Insight Communications Company, L.P. (hereinafter referred to as "Insight") within the City of Delta, Utah; granting Insight a license to use the City streets and public utility easements for said franchise and setting forth terms and conditions for granting said franchise.

WHEREAS, the City Council adopted Resolution Nos. 98-257 dated September 14, 1998, and amended by Resolution No. 98-258 dated November 28, 1998, approving the transfer of said franchise from Insight to TCI of Indiana, Inc., (hereinafter referred to as "TCI").

WHEREAS, in accordance with the provisions of the franchise, TCI has now requested that Delta City consider a proposed transfer of said franchise to MALLARD CABLEVISION, L.L.C., (hereinafter referred to as "MALLARD") and adopt a resolution authorizing such transfer.

WHEREAS, after consideration of the proposed transfer, the City Council has determined that it is in the best interests of the residents of Delta City to adopt a resolution, subject to the conditions for approval as set forth in this resolution, providing for and allowing for said transfer.

THEREFORE, BE IT RESOLVED by the City Council of the City of Delta, Utah:

1. Compliance with Applicable Law. The consent by the City Council to approve the transfer of said franchise from TCI to MALLARD is conditioned upon MALLARD's agreement to be bound by and to comply with all of the provisions of said franchise.

2. Approval of Transfer. The City Council's approval of said transfer shall become effective upon compliance by MALLARD, within 30 days from the date of this resolution, of all of the following conditions:

(a) All franchise fees due and owing as of the date of approving said transfer shall be paid in full;

(b) Filing with the City Recorder a copy of the Certificate of Insurance required by said franchise, which specifically names Delta City as an additional insured on MALLARD's insurance policy, as of the effective date of the transfer between TCI and MALLARD. Provided, however, that TCI's insurance policy shall remain in full force and effect up to and including the date of the transfer. In addition, MALLARD's Certificate of Insurance shall provide that Delta City shall be notified in writing, not less than ten (10) days in advance of any contemplated action to cancel said insurance policy or amend any of the terms or provisions thereof.

(c) Filing with the City Recorder a copy of the franchise bond, with corporate surety, in an amount required by Section 11 of the Franchise.

(d) TCI shall indemnify and defend Delta City against any liability, claim or cause of action arising from the construction, operation or maintenance of TCI's system within Delta City, until the time at which the franchise transfer approved under this resolution becomes effective. From the effective date of such transfer, MALLARD shall indemnify and defend Delta City from any liabilities, claims or causes of action pursuant to section 16 of the Franchise.

(e) MALLARD shall file with the City Recorder, within 30 days of the passage hereof, an instrument addressed to the City of Delta in a form acceptable to the City Mayor and City Attorney, accepting the franchise and agreeing to comply with each and all of

the terms and provisions set forth in said franchise. If such acceptance has not been filed within the time specified, the resolution approving the transfer of this franchise shall be voidable by the City.

(f) Upon completion of each of the forgoing provisions of this paragraph by MALLARD, the Delta City Mayor shall immediately prepare and file with the City Recorder a certificate stating that each of the foregoing provisions of paragraph 2 has been completed.

3. Approval to Encumber Franchise. In accordance with Section 6 of the franchise, entitled "Limitation Upon Grant", the City Council hereby approves and MALLARD is hereby given the right to encumber all or any part of the interest of MALLARD in and under the franchise, by transferring in trust, mortgage or other hypothecation, as a whole or in part, to secure such indebtedness as may be necessary for the operation and maintenance of the cable television system.

4. Continuance of Franchise. Delta City acknowledges that the franchise remains in full force and effect, notwithstanding any defaults by TCI (none known to date), to and including the date of transfer, provided, however, that Delta City does not waive its right to bring any cause of action against TCI for damages to Delta City resulting from TCI's default in complying with the terms and conditions of the Franchise to and including the effective date of said transfer.

5. Effective Date. This resolution shall become effective upon adoption. The franchise transfer approved hereby shall become effective upon compliance with the provisions of paragraph 2 of this resolution.

6. Severability. In the event that any provision of this resolution less than the entire resolution is held invalid by a court of competent jurisdiction, this resolution shall be deemed severable and such finding of invalidity shall not affect the remaining portions of this resolution.

7. Repeal of Conflicting Resolutions. To the extent that any resolutions or policies of the City of Delta conflict with the provisions of this resolution, they are hereby amended to be in accordance with the provisions hereof.

PASSED AND APPROVED this 11th day of September, 2000.



GAYLE BUNKER
Mayor Pro Tempore



Attest: Gregory Jay Schaffer
GREGORY JAY SCHAFER
City Recorder

000908.3.5/DC.MALLARD.RES