

APPROVED

BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS

AUG 08 2006 *JWS*

# RESOLUTION

*of the*

**ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS**

*regarding*

**TRANSFER OF CONTROL OF THE BELLSOUTH  
ENTERTAINMENT, LLC ("BEI") CABLE TELEVISION  
FRANCHISE, FROM BELLSOUTH CORPORATION TO AT&T  
INC. ("AT&T")**

**Resolution No. 2006-M-44**

**WHEREAS**, on March 31, 2006, Orange County, Florida (the "County"), received an FCC 394 application requesting the County to consent to the proposed transfer of control of the BellSouth Entertainment, LLC ("BEI") cable television franchise from BellSouth Corporation ("BellSouth") to AT&T Inc. ("AT&T"); and

**WHEREAS**, pursuant to cable Ordinance No. 98-20 of the Orange County Code of Ordinances and the BellSouth Franchise granted thereunder, no such transfer may occur without prior approval of the Board of County Commissioners; and

**WHEREAS**, pursuant to applicable federal law the County is required to take action to grant or deny the application within one hundred twenty (120) days of receipt or the application shall be automatically deemed approved; and

**WHEREAS**, BellSouth Entertainment, LLC agreed to an extension of said automatic approval period to August 11, 2006; and

**WHEREAS**, it is the County's intent to take any and all appropriate action to avoid any such automatic approval; and

**WHEREAS**, the County has required that the applicants fulfill the obligations of Ordinance No. 98-20 and the Franchise and provide information on the proposed transaction including details regarding the legal, financial, and technical qualifications of AT&T and such other information as may be in the public interest; and

**WHEREAS**, the County has relied on information provided by BEI and AT&T; and

**WHEREAS**, the County has required a written "Agreement to Amend and Transfer Control of Cable Franchise" from BellSouth Entertainment, LLC accepting the terms and conditions of this Resolution and the Franchise as a condition to the adoption of this Resolution (attached hereto as Exhibit A).

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY, FLORIDA, THAT:**

**Section 1.** Orange County hereby consents to the transfer of control of the BellSouth Entertainment, LLC cable television franchise from BellSouth Corporation to AT&T Inc. on the condition that within thirty (30) days after the adoption of this Resolution by the Board of County Commissioners, the County is in receipt of an executed Agreement to Amend and Transfer Control of Cable Franchise in the form attached hereto.

**Section 2.** That the consent granted herein does not constitute and should not be construed to constitute a waiver or release of any obligations of BellSouth Entertainment, LLC under cable Ordinance No. 98-20 and the cable television Franchise granted pursuant to Ordinance No. 98-20.

**Section 3.** That the consent granted herein does not and should not be construed to constitute a waiver of any right of the County under any applicable federal, state and local law including, but not limited to Ordinance No. 98-20 and the cable television Franchise; and further, this consent shall not prejudice the County's rights with respect to the enforcement, lawful revocation, lawful termination, renewal or subsequent transfer of the cable television Franchise and any amendments thereto or agreements in connection therewith.

**Section 4.** That the consent granted herein is conditioned upon execution by BEI and the County of the Agreement attached hereto and incorporated herein as Exhibit A.

**Section 5.** Notwithstanding anything to the contrary, if the County is not in receipt of the executed Agreement to Amend and Transfer Control of Cable Franchise in the form attached hereto within thirty (30) days after the date of this Resolution, the County hereby denies the pending application to transfer control of the cable television franchise currently held by BEI to

AT&T Inc. BEI hereby waives any and all claims it may have that any denial of the Transfer Application that results from the failure of BEI to deliver the executed Agreement as required by this Section 5 fails to satisfy the deadlines established by applicable law including, without limitation, claims based on, arising out of or relating to 47 U.S.C. Section 537 , as amended and agrees that it shall be deemed to have agreed to an extension of the time to act on the Transfer Application as required to make any such denial effective.

**Section 6.** In the event of a denial of the pending application pursuant to Section 5 above, nothing herein shall be deemed a waiver of the Franchisee's right to re-submit said application to the County.

**Section 7.** That the County hereby reserves all of its rights pursuant to federal, state and local law including, but not limited to the rights in (a) the Franchise renewal process (b) the Franchise transfer process including, but not limited to, the right to act upon any application to sell, assign or otherwise transfer controlling ownership of the cable system; (c) the enforcement of the current Ordinance No. 98-20, and the current cable television Franchise (d) the Franchise revocation and termination process and (e) any and all proceedings in connection with the merger of BellSouth and AT&T which could, in the County's determination, have an impact on the operation of the Franchisee or the Franchise in the County.

**Section 8.** That the consent granted herein is an express non-waiver and express reservation of the County's rights and authority with respect to enforcement of the Franchisee's compliance with applicable law including, but not limited to Ordinance No. 98-20, and the current cable television Franchise. To the extent not in conflict with the terms of this Resolution, the Franchise Agreement the Orange County Code of Ordinances or the attached Agreement to Amend and Transfer Control of Cable Franchise (Exhibit A), Franchisee shall be liable for any

and all violations or breaches (if any) of said Ordinance(s) or Franchise regardless of whether such violations arose prior to or after the close of the transaction. The County's approval of the transfer of control shall in no way be deemed a representation by the County that BEI is in compliance with its obligation under Ordinance No. 98-20 or the Franchise Agreement, nor shall BEI's acceptance and execution of the attached Agreement (Exhibit A) in any way be deemed an admission by BEI that it is not in full compliance with such obligations.

**Section 9.** In the event the proposed transaction between BellSouth and AT&T is not consummated by February 10, 2007, or in the event such closure is reached on terms substantially or materially different to the terms described in the application and exhibits thereto, submitted to the County on or about March 31, 2006, this Resolution, together with the Agreement to Amend and Transfer Control of Cable Franchise (Exhibit A), shall be null and void.

**Section 10.** That this Resolution shall become effective upon the date of its adoption herein.

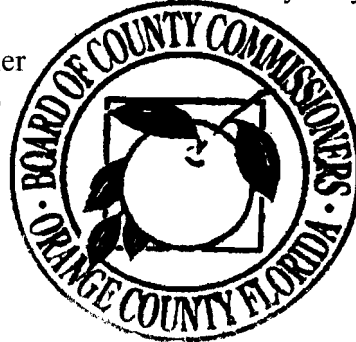
RESOLVED THIS 8th DAY OF August, 2006.

ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: Richard T. Crotty  
Richard T. Crotty  
Orange County Mayor

ATTEST: Martha O. Haynie, County Comptroller  
As Clerk of the Board of County Commissioners

By: Martha O. Haynie  
Deputy Clerk



## **EXHIBIT "A"**

### **AGREEMENT TO AMEND AND TRANSFER CONTROL OF CABLE FRANCHISE**

This CABLE FRANCHISE TRANSFER AGREEMENT (the "Agreement") is made and entered into on the \_\_\_\_ day of August, 2006, by Orange County, Florida (the "County"), and BellSouth Entertainment, LLC ("BEI" and "Franchisee").

#### **RECITALS**

**WHEREAS**, BellSouth Entertainment, LLC currently holds a Cable Franchise (the "Franchise") from the County pursuant to that certain Franchise Agreement to Provide Cable Services between the County and BellSouth (the "Franchise Agreement"), and subject to Ordinance No. 98-20 of the Orange County Code of Ordinances (the "Cable Ordinance") and amendments thereto, all of which documents, as any of them may lawfully be or may have been amended from time to time, are collectively referred to as the ("Franchise Documents"); and

**WHEREAS**, pursuant to an Agreement and Plan of Merger between BellSouth Corp. and AT&T Inc., AT&T Inc. will acquire BellSouth Corporation and control of the Cable Television Franchise currently held by BellSouth Entertainment, LLC for unincorporated Orange County; and

**WHEREAS**, the Franchise Agreement provides that the prior written consent of the County is required for the transfer of control of the Franchise pursuant to the proposed merger and the Cable Ordinance provides that the Franchise Agreement shall not be assigned, transferred, sold or disposed of without the prior consent of the County as authorized by resolution of the Board of County Commissioners; and

**WHEREAS**, on or about March 31, 2006, the Companies filed an FCC Form 394 with the County and requested that the County consent to the proposed merger and Transfer of control of the Franchise; and

**WHEREAS**, relying on the representations of BellSouth Entertainment, LLC and AT&T Inc., the County is willing to grant its consent to the proposed merger and the transfer of control of the Franchise from BellSouth Corporation to AT&T Inc., subject to the terms and conditions set forth herein; and

**WHEREAS**, BEI is currently the Franchisee and a wholly-owned subsidiary of BellSouth Corporation, and, after the merger, BEI will remain the Franchisee and become a wholly-owned subsidiary of AT&T; and

**WHEREAS**, it is therefore appropriate to view BEI as the transferee for purposes of this Agreement and the Cable Ordinance, and for BEI to execute this Agreement on behalf of itself and in its capacity as a wholly-owned subsidiary of AT&T after the merger.

**NOW, THEREFORE**, in consideration for the County's consent to the proposed transfer of control of the Franchise and subject to the terms and conditions of this Agreement and of the Resolution of the Board of County Commissioners consenting to the transfer of control and authorizing the Mayor of the County to consent to the transfer of control and execute this Agreement (the "Resolution"), the Parties hereto do hereby agree as follows:

**Section 1. TRANSFER OF CONTROL OF FRANCHISE.**

1. The foregoing recitals are true and correct and are incorporated herein by reference.
2. BEI agrees that (1) upon completion of the subject merger and transfer of control of BellSouth Corporation to AT&T Inc., BEI, as a wholly-owned subsidiary of BellSouth Corporation, will thereby become a wholly-owned subsidiary of AT&T Inc.; and (2) that upon the occurrence of such event and as a condition of the County's approval of such transfer of control, BEI, as the post-merger "transferee" of the Franchise, will continue to abide by and be deemed to have accepted all applicable terms and provisions of the Orange County Code of Ordinances (Ordinance) and the Franchise Agreement and will continue to be bound by the previous obligations and liabilities of BEI under the Ordinance and Franchise Agreement just prior to the Merger.
3. Subject to the execution of this Agreement by BEI and the County, the County has consented through the Resolution, and the Mayor of the County by execution of this Agreement, to the Proposed Transactions as specified in the Transfer Application and the transfer of control of the Franchise from BellSouth Corporation to AT&T, Inc., in consideration for the promises and performance of BellSouth Entertainment, LLC as expressed in this Agreement.
4. Subject to the execution of this Agreement and the Resolution, the transfer of control of the Franchise from BellSouth Corporation to AT&T Inc. shall be effective upon the effective date of the consummation of the proposed merger. Notice of such date shall be given by BellSouth Entertainment, LLC to the County within thirty (30) days of said closing.

**Section 2. ACCEPTANCE OF AMMENDMENT OF FRANCHISE**

1. BellSouth Entertainment, LLC and the County hereby agree to amend the Franchise granted to BellSouth by Resolution No. \_\_\_\_ by the addition of the following:

“Section 4.....” Notwithstanding anything to the contrary contained herein or in Ordinance No. 98-20, or amendments thereto including but not limited to Ordinance No. 2001-05, if by October 20, 2007, BellSouth Entertainment, LLC has not provided to the County a commitment to start providing cable television service over a cable system to residents of unincorporated Orange County by a date certain under the terms and conditions of the existing Franchise, the expiration date of the Franchise, which is October 20, 2010, shall accelerate automatically and without fault to either the County or to BellSouth Entertainment, LLC to expire as of October 20, 2007. No further action shall be required by the County to effect such expiration and neither BellSouth Entertainment, LLC nor AT&T Inc. shall raise any objection or challenge to such automatic expiration, including, but not limited to, any claim of lack of due process if such expiration is in accordance with the terms of this amendment.
2. The County hereby agrees that the above amendment to the Franchise supersedes the process set forth in a letter from Jim Evans to Donald Granger dated March 10, 2005.

**Section 3. ACCEPTANCE OF FRANCHISE OBLIGATIONS.**

1. BellSouth Entertainment, LLC hereby accepts, acknowledges and agrees that, upon the effective date of the transfer of control, resulting from the consummation of the proposed merger, it will continue to be bound by all the commitments, duties, and obligations of the Franchisee embodied in the Franchise Agreement as amended and that the proposed merger will have no effect on limiting or negating any such obligation.
2. By execution of this Agreement, BellSouth Entertainment, LLC accepts the validity of the terms and conditions of this Agreement and the Franchise Agreement as amended in their entirety under applicable law in existence as of the effective date of this Agreement.

**Section 4. RESERVATION OF RIGHTS.**

1. The County reserves all rights not expressly granted in this Agreement, including without limitation those specified below.
2. Except to the limited extent expressly agreed in Section 2 and Section 7.2 of this Agreement, neither BEI nor the County waives any of its rights with respect to the Franchise or Franchisee's compliance with the requirements set forth in the Franchise Agreement, including, but not limited to, the right of the County to object to or otherwise intervene in any matter related to the Franchise or the exercise of the County's franchising authority. At no time will BellSouth Entertainment, LLC contend, either directly or indirectly, that the County is barred, by reason of the proposed merger, from considering, or raising claims based on, any defaults of the Franchisee, or any failure by the Franchisee to comply with the terms and conditions of the Franchise Agreement or with applicable law.
3. Neither this Agreement, nor any other action or omission by the County at or before the execution of this Agreement, shall be construed to grant the County's consent to any future transfer of the Franchise, or any future change in ownership or control of BellSouth Entertainment, LLC or AT&T Inc. The County's consent to the proposed transfer is limited solely to the transfer of control of the Franchise from BellSouth Corporation to AT&T Inc.
4. Any consent given by the County to the proposed transfer of control is made without prejudice to, or waiver of, the County's right to investigate and take into account any lawful considerations during any future Franchise termination, revocation, renewal or transfer process.
5. This Agreement does not affect and shall not be construed to affect the rights and lawful authority of the County to regulate or authorize, by ordinance, license or otherwise, use of the public rights-of-way for purposes other than for Cable Television service.

**Section 5. REPRESENTATIONS AND WARRANTIES.**

1. BellSouth Entertainment, LLC hereby represents and warrants that at the time of the execution of this Agreement: (a) it is a corporation or partnership duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized, and it is authorized to conduct business in the State of Florida; (b) the Franchise Agreement and, assuming due execution hereof by the other party hereto, this Agreement constitute legal, valid and binding obligations of such parties enforceable in accordance with their terms; (c) the execution and delivery of, and performance by BEI under, this Agreement, and the Franchise Agreement, where applicable, are within BEI's power and authority

without the joinder or consent of any other party and have been duly authorized by all requisite corporate or partnership action on the part of BEI and are not in contravention of BEI's partnership agreement, charter, bylaws and/or other organizational documents; and (d) no representation made to the County by BEI is incomplete, untrue or inaccurate in any material respect.

2. BellSouth Entertainment, LLC represents and warrants that neither the proposed merger nor this Agreement will adversely affect its ability to meet the requirements of the Franchise Agreement.

**Section 6. INDEMNIFICATION.**

1. BellSouth Entertainment, LLC agrees, subject to and consistent with the indemnity obligations set forth in Section 12-12 of the Cable Ordinance, to indemnify and hold the County harmless against any loss, claim, damage, liability or expense (including, without limitation, reasonable attorneys' fees, whether at trial, on appeal or otherwise) caused by any representation or warranty made by BellSouth Entertainment, LLC herein which is determined by a court of competent jurisdiction to be untrue or inaccurate in any material respect.

**Section 7. ADDITIONAL CONDITIONS.**

1. Any County consent to the proposed transfer of control of the Franchise Agreement provided for in this Agreement, the Transfer Resolution or elsewhere, shall be void and of no force or effect, and the County's consent to the proposed transfer of control of the Franchise shall be deemed to have been lawfully and timely denied in the event of the occurrence of any of the following conditions:

A. The proposed merger does not close by February 10, 2007.

B. The proposed merger closes on terms that are substantially different from the terms disclosed to the County in the Transfer Application.

C. This Agreement shall have not been executed by BEI hereto within thirty days of the date of the Resolution granting approval to the proposed transfer of control of the BellSouth Entertainment, LLC Cable Television Franchise from BellSouth Corporation to AT&T Inc.

2. BellSouth Entertainment, LLC hereby waives any and all claims that it may have that any denial of the Transfer Application that results from the failure of any conditions set forth in Section 7.1 of this Agreement fails to satisfy the deadlines established by applicable law including, without limitation, claims based on, arising out of, or relating to 47 U.S.C. Section 537, as amended, and agrees that it shall be deemed to have agreed to an extension of the time to act on the Transfer Application as required to make any such denial effective.

**Section 8. BREACHES.**

Any breach of this Agreement, including, but not limited to, any representations and/or warranties contained in this Agreement that are found to be incomplete, untrue or inaccurate in any material respect, shall be deemed a breach of the Franchise Agreement and 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 Agreement at law or equity.



**Section 9. MISCELLANEOUS PROVISIONS.**

1. **EFFECTIVE DATE.** This Agreement shall be effective and binding upon the parties hereto once it has been signed by all the parties hereto.

2. **BINDING ACCEPTANCE.** This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, who may become bound by the Cable Franchise Agreement and the promises and obligations herein shall survive until the expiration date of the Cable Franchise. Any purported assignment of this Agreement separate from the Cable Franchise is void without the express written consent of the parties hereto.

3. **VOLUNTARY AGREEMENT.** This 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 Agreement. Neither BellSouth Entertainment, LLC nor any of its affiliates, nor the County, will take any action to challenge the validity of any provision of this Agreement, nor will they participate with any other person or entity in any such challenge.

4. **SEVERABILITY.** If any term, condition or provision of this 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.

5. **COUNTERPARTS.** This 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. **CONFORMING AMENDMENTS TO FRANCHISE AGREEMENT.** BellSouth Entertainment, LLC and the County agree to negotiate in good faith amendments to the Franchise Agreement to the extent any may be necessary to reflect the Proposed Transactions or the provisions of this Agreement.

7. **GOVERNING LAW.** This Agreement shall be deemed to be executed in Orange County, Florida, and shall be governed and construed in all respects by the laws of the State of Florida and applicable federal law.

8. **CAPTIONS AND REFERENCES.** The captions and headings of sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions and headings shall not affect the meaning or interpretation of this Agreement.

[REMAINDER OF PAGE IS INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed at the place and on the day hereinabove first written.

The execution of this document was authorized by Resolution No. \_\_\_\_\_.

ORANGE COUNTY, FLORIDA  
By: Board of County Commissioners

By: \_\_\_\_\_  
Richard T. Crotty  
Orange County Mayor

Date: \_\_\_\_\_

ATTEST: Martha O. Haynie, Comptroller as  
Clerk to the Board of County Commissioners

By: \_\_\_\_\_  
Deputy Clerk

Date: \_\_\_\_\_

BELLSOUTH ENTERTAINMENT, LLC  
("BELLSOUTH")

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
\_\_\_\_\_