

RESOLUTION NO. 98-257

A RESOLUTION CONDITIONALLY APPROVING THE TRANSFER OF AN EXISTING CABLE TELEVISION FRANCHISE, "FRANCHISE", HERETOFORE GRANTED BY DELTA CITY TO INSIGHT COMMUNICATIONS COMPANY, L.P., PURSUANT TO DELTA CITY ORDINANCE NO. 90-122 AND SETTING FORTH TERMS AND CONDITIONS FOR APPROVING SUCH TRANSFER OF SAID FRANCHISE FROM INSIGHT COMMUNICATIONS COMPANY, L.P. TO TCI OF INDIANA, INC.

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 an ordinance (Ordinance No. 90-122) granting a cable television franchise, hereinafter referred to 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, in accordance with the provisions of the franchise, Insight has requested that Delta City consider a proposed transfer of said franchise to TCI of Indiana, Inc., hereinafter referred to as "TCI," 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 Insight to TCI is conditioned upon TCI'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 Insight, within 30 days from the date of this resolution, of each and 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 insurance policy required by said franchise, which specifically names Delta city as an additional insured on TCI's policy, as of the effective date of the transfer between Insight and TCI. Provided, however, that Insight's insurance policy shall remain in full force and effect up to and including the date of the transfer. In addition, said insurance policy 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) TCI 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.

(d) Pursuant to the franchise, Insight shall indemnify and defend Delta City against any liability, claim or cause of action arising from the operation of Insight'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, TCI shall be responsible for any liabilities, claims or actions under or affecting such franchise.

(e) Upon completion of each of the forgoing provisions of this paragraph by TCI, the Delta City Mayor shall immediately prepare and file with the City Recorder a certificate stating that each of the foregoing provision 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 TCI is hereby given the right to encumber all or any part of the interest of TCI 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 Insight (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 Insight for damages to Delta City resulting from Insight's default in complying with the terms and conditions of said resolution 90-122 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 fo 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 14th day of September, 1998.



R. DALE ROPER, Mayor

Attest: 
DOROTHY JEFFERY
City Recorder