

RESOLUTION NO. 03-310

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED SECOND AMENDMENT TO LEASE BETWEEN THE CITY AND COMCAST; PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

Section 1: That the attached Second Amendment to Lease between the City and Comcast for property located on College Road for use for an existing communications tower is hereby approved.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 3 day of September, 2003.

Authenticated by the presiding officer and Clerk of the Commission on September 4, 2003.

Filed with the Clerk September 4, 2003.

ATTEST:


CHERYL SMITH, CITY CLERK


JIMMY WEEKLEY, MAYOR

**SECOND AMENDMENT TO LEASE
BETWEEN
COMCAST OF CALIFORNIA / COLORADO / FLORIDA / OREGON, INC
AND
THE CITY OF KEY WEST**

THIS SECOND AMENDMENT TO LEASE ("Second Amendment") is made as of this 28 day of ~~September~~ 2003 between **THE CITY OF KEY WEST** a municipal corporation organized and existing under the laws of the state of Florida ("Lessor"), and **COMCAST OF CALIFORNIA / COLORADO / FLORIDA / OREGON, INC.**, a Georgia corporation ("Lessee"), formerly known as TCI Cablevision of Georgia, Inc., successor by merger to TCI Cablevision of Florida, Inc. WITNESSETH

WHEREAS, Lessor and Lessee are parties to a Lease Agreement dated July 1, 1995, ("Lease") for the real property located at Jr. College Road (a/k/a City Dump Road), Stock Island, Florida as legally described in the attached Exhibit 1 ("Premises"); and

WHEREAS, the initial term of the Lease was due to expire on June 30, 2000;

WHEREAS, although prior to the expiration of the initial term of the Lease, the parties negotiated and drafted an Amendment to Lease (the "First Amendment"), to renew the term of the Lease, pursuant to Paragraph 1 of the Lease, for a five-year period commencing on July 1, 2000, the First Amendment was not executed by the parties;

WHEREAS, with Lessor's consent, Lessee has continued to lease the Premises as a hold-over tenant since July 1, 2000 at a total rent of \$16,000 per year; and

WHEREAS, Lessor and Lessee desire to amend the Lease, pursuant to the terms of this Second Amendment, effective as of October 1, 2003; and

NOW THEREFORE, in consideration of the mutual covenants and conditions of this Lease and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby AMEND the Lease as follows, effective as of October 1, 2003:

1. The Term of the Lease is hereby extended by an additional Ten (10) years (the "Extension Term"), commencing October 1, 2003 and expiring September 30, 2013.

2. The rent for the Extension Term shall be increased to \$18,000.00 per year payable in equal monthly installments of \$1,500.00. Such rent shall increase annually by three percent (3%) over the prior years rent.

3. All notices or demands required or permitted to be given or served pursuant to this Lease shall be deemed to have been given or served only if in writing forwarded by certified mail, postage prepaid or by overnight courier, and addressed as follows:

Lessor: The City of Key West
 PO Box 1409
 Key West Florida, 33301
 Attn: City Manager

Lessee: Comcast of California / Colorado / Florida / Oregon, Inc.
18601 NW 2nd Avenue
Miami, Florida, 33169

with a copy to:

Comcast Cable Communications, Inc.
1500 Market Street
Philadelphia, Pennsylvania 19102
Attn: General Counsel

4. Lessor grants to Lessee two additional renewal periods for this Lease of Ten (10) years each, each commencing upon the day following the last day of the immediately preceding term. These renewal periods may be exercised for each renewal period only by written notice delivered to Lessor not later than three (3) months before the then-current term is to expire, and a resolution from the City Commission approving such renewal period. If such renewal is exercised, and approved by the City Commission, this Lease shall continue during the respective renewal period(s) upon all the terms, covenants and conditions set forth hereunder.

5. Notwithstanding anything to the contrary in the Lease, the Lessee shall not make any improvements to the Premises without the prior written approval of the Lessor, which approval shall not be unreasonably withheld, conditioned or delayed.

6. Lessor agrees that Lessee may at Lessee's expense remove an existing tower (Tower 2-161 foot) and repair an existing tower (Tower 1-160 foot) and replace the One Story Building (Building 1), each as identified on the attached Sit Plan, Exhibit 2.

7. All other terms and conditions of the Lease not amended hereby shall remain in full force and effect and are hereby ratified and confirmed. It is the intention of the parties hereto, that in the event of any conflict between the terms of this Second Amendment and the Lease, this Second Amendment shall prevail and any conflicting language, terms or provisions in the Lease shall be inoperative.

8. Notwithstanding anything to the contrary in the Lease, Lessee may use the Premises to furnish or supply its customers with services provided or franchised by Lessee from time to time during the term of the Lease as extended hereby and as it may be further renewed or extended, including, but not limited to, cable television, telecommunications, commutations, and information services provided by Lessee.

9. Paragraph 10 of the Lease is deleted.

10. Paragraph 15 of the Lease is amended by substituting "Certificates of such insurance policy or policies" for "A true copy of the insurance contract".

11. Paragraph 22 is amended to add the following at the end of the paragraph thereto:

"Lessee may sublease space on Premises or any improvement or tower constructed by Lessee on the Premises, including but not limited to any tower or building. In addition, notwithstanding anything to the contrary in the Lease, Lessee may assign the Lease to an affiliate, subsidiary or operating division of Lessee, or to any entity acquiring all or substantially all of Lessee's assets or stock, without the necessity of Landlord's consent other than any the consent of Lessor to a transfer of Lessee's franchise, if applicable, and to the extent such consent is required by law."

IN WITNESS WHEREOF, the parties have caused this Second Amendment to Lease to be executed as of the date first written above.

WITNESSES:

Cheryl Smith
Walter Piles

LESSOR:

THE CITY OF KEY WEST

By:

Print Name:

Title:

Jimmy Weekley
Jimmy Weekley
Mayor

WITNESSES:

Walter Piles
Doree Lewis

LESSEE:

COMCAST OF CALIFORNIA /
COLORADO / FLORIDA / OREGON, INC.

By:

Print Name:

Title:

Stephen Burk
STEPHEN BURK
President, Comcast

Exhibit 1
Site Legal Description

Commencing at the Southwest corner of the American Legion Property, as described in Deed Book G71, Page 137 of the Public Records of Monroe County, Florida, said Southwest corner also to be known as the point of beginning of the tract of land hereinafter described, bear North 11 degrees and 03 minutes East for a distance of 278.25 feet to the Northwest corner of the American Legion Property; thence bear North 51 degrees and 58 minutes West for a distance of 182.83 feet to a point on the approximate centerline of the City Dump Road; thence bear South 40 degrees and 46 minutes West on the approximate centerline of the City Dump Road for a distance of 600.0 feet to a point; thence meander the north edge of the Country Club Road in an easterly direction for a distance of 492.88 feet, back to the point of beginning.

EXHIBIT 2
Site Plan

